

Al Rajhi Bank

Ex. 96

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
3

4 IN RE: TERRORIST ATTACKS ON
5 SEPTEMBER 11, 2001

6 Underwriting Members of Lloyd's
7 Syndicate 2, et al., v.
8 Al Rajhi Bank, et al., 03 MDL 1570
9 No. 16-cv-07853 (GBD) (SN)

10 Addesso, et al. V. Kingdom of ECF Case
11 7 Saudi Arabia, et al.,
12 No. 16-cv-09937

13 Aguilar, et al. V. Kingdom of
14 Saudi Arabia, et al.,
15 No. 16-cv-09663

16 Hodges, et al. V. Kingdom of
17 Saudi Arabia, et al.,
18 No. 17-cv-00117

19 Aiken, et al. V. Kingdom of
20 Saudi Arabia, et al.,
21 No. 17-cv-00450

22 Charter Oak Fire Insurance Co.,
23 et al. V. Al Rajhi Bank, et
24 al., No. 17-cv-02651

25 Abarca, et al. V. Kingdom of
26 Saudi Arabia, et al.,
27 No. 17-cv-03887

28 Arrowood Indemnity Co., et al.
29 v. Kingdom of Saudi Arabia, et
30 al., No. 17-cv-03908

31 Abedhajajreh, et al. V. Kingdom
32 of Saudi Arabia, et al.,
33 No. 17-cv-06123

34

1 Muenchener
2 Rueckversicherungs-Gesellschaft
3 Aktiengesellschaft in Muenchen,
et al. V. Kingdom of Saudi
Arabia, et al.,
Case No. 17-cv-07914

4
5 Abbate, et al. V. Kingdom of
Saudi Arabia, et al.,
No. 17-cv-08617

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8 THSI TRANSCRIPT CONTAINS CONFIDENTIAL MATERIAL

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10 - - -

11 VIDEOTAPED EXPERT DEPOSITION OF
12 ROBERT S. PASLEY

13

14 Wednesday, January 31, 2024

15 9:11 a.m. Eastern Time

16

17

18

19 Reported by: Denise Dobner Vickery, CRR, RMR
20 JOB NO.: 350185

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22 GOLKOW LITIGATION SERVICES

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11 Videotaped Expert Deposition of

12 ROBERT S. PASLEY, held at the offices of:

13

14 WHITE & CASE LLP

15 701 Thirteenth Street NW

16 Washington, DC 20005

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21 Dohner Vickery Certified Realtime Reporter

22 Registered Manit. Reporter and Notary Publics

²²—and from the District of Columbia.

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1 PROCEEDINGS

2 - - -

3 THE VIDEOGRAPHER: We are now
4 on the record.

5 My name is a Vince Rosica.

6 I'm a videographer for Golkow Litigation
7 Services. Today's date is January 31,
8 2024 and the time is 9:11 a.m.

9 This video deposition is being
10 held in Washington, DC in the matter of
11 Terrorist Attacks on September 11, 2001
12 MDL No. 1570. The deponent is Robert S.
13 Pasley.

14 Counsel, please identify
15 yourselves for the record video record.

16 MR. CARTER: Sean Carter from
17 Cozen O'Connor on behalf of plaintiffs,
18 and I have with me in the room today my
19 colleague, Scott Tarbutton, and
20 participating via the Zoom, my colleague,
21 William Clark.

22 MR. MAHAFFEY: Michael
23 Mahaffey of White & Case on behalf of Al
24 Rajhi Bank and the witness. I'm joined

in the room by my firm colleagues,
Nicolle Kowacki and Courtney Davis. My
firm colleague, Reuben Sequeira, will be
joining virtually. We also have a
representative from Al Rajhi Bank's legal
department, Abdulrahman Al Mussaed is
appearing virtually as well.

10 Is that all the appearances?

11 MR. CARTER: No, I believe we
12 have some other folks appearing by Zoom,
13 and if those folks could simply identify
14 themselves now, that would be helpful.

15 MR. MOHAMMEDI: This is Omar
16 Mohammedi on behalf of World Assembly of
17 Muslim Youth. I have with me Fatema
18 Zohny as well as Mustapha Ndanusa.

19 M.R. GRYSKIEWICZ: And you've
20 got Jon Gryskiewicz from Lewis Baach
21 Kaufmann Middlemiss representing MWL,
22 IIRO, and certain charity officials.

23 MS. PRITSKER: And Gabrielle
24 Pritsker from Jones Day on behalf of the

1 defendant Dubai Islamic Bank.

2 THE VIDEOGRAPHER: The court
3 reporter is Denise Vickery and will now
4 swear in the witness.
5 - - -

6 ROBERT S. PASLEY

7 called for examination, and, after having been
8 duly sworn, was examined and testified as
9 follows:
10 - - -

11 EXAMINATION
12 - - -

13 BY MR. CARTER:

14 Q. Good morning, Mr. Pasley. How are
15 you?

16 A. I'm fine. Thank you.

17 Q. We're here today to take your
18 deposition in the In re Terrorist Attacks matter.

19 Have you been deposed before?

20 A. Yes, I have.

21 Q. Although you might be familiar with
22 the process, let me just go through a couple of
23 the ground rules so that we're clear.

24 A. That would be fine.

1 Q. Okay. The court reporter to your
2 left is going to be taking down both my questions
3 and your answers in a transcript. So it's
4 important that you allow me to finish my questions
5 before answering, and that I allow you to finish
6 your answer before asking another question.

7 Does that sound fair?

8 A. That would be fine.

9 Q. At any point during the deposition
10 if you need a break, simply let us know, and we'll
11 find an appropriate time to -- to let you take a
12 break.

13 Is that also fair?

14 A. That's fine.

15 Q. And over the course of today, the
16 expectation is that you'll provide full and
17 complete answers to my questions, and that if you
18 have information that is fully or partially
19 responsible -- responsive to the questions, you'll
20 share that with me.

21 Is that fair?

22 A. Yes, that is.

23 Q. I understand that you're being
24 offered as an expert on behalf of Al Rajhi Bank in

1 the litigation?

2 A. That is correct.

3 Q. And are you aware that this
4 litigation arises from injuries suffered as a
5 result of the September 11th attacks on the United
6 States?

7 A. Yes, I do.

8 Q. And are you aware that the
9 plaintiffs in the litigation include individuals
10 who are claiming wrongful death and personal
11 injuries as a result of the attacks?

12 A. Yes, I'm aware of that.

13 Q. And are you also aware that the
14 plaintiffs include commercial parties that
15 suffered damages as well?

16 A. Yes, I'm aware of that.

17 Q. Okay. And I trust that you agree
18 with me that this involves relatively important
19 matters?

20 A. Yes, I agree with you.

21 Q. And you're aware that you are under
22 oath and will be under oath throughout the course
23 of the deposition?

24 A. Yes, I understand that.

1 MR. CARTER: If we can mark as
2 Exhibit 1 the notice of Mr. Pasley's
3 deposition.

4 (Document marked for
5 identification as Pasley Exhibit 1.)

6 MR. CARTER: And we're going
7 to use the designation for today of
8 Pasley 1 and continuing with that
9 formatting.

10 BY MR. CARTER:

11 Q. Mr. Pasley, I've marked as Exhibit 1
12 to your deposition the Notice of Oral Deposition
13 that we sent to counsel for Al Rajhi Bank
14 scheduling today's deposition.

15 Have you seen this before?

16 A. No, I have not.

17 Q. Okay. Under number 4 in the notice
18 of deposition, we asked that you provide any
19 billing statements, invoices, or the like, for the
20 work that you did in connection with your review
21 of materials in the case and preparation of your
22 expert report.

23 Do you see that?

24 A. Yes, I see that.

1 Q. Do you have any of those materials
2 with you today?

3 A. No, I do not.

4 Q. Have you generated invoices for your
5 work?

6 A. Yes, I have.

7 Q. And have you generated any
8 itemization of the work that you conducted?

9 A. In the invoices, there's a general
10 description of the work I've -- I've had.

11 Q. And did you send those invoices to
12 counsel at White & Case?

13 MR. MAHAFFEY: Objection.

14 You can answer to the extent
15 your response does not reveal
16 communications with counsel.

17 THE WITNESS: Yes, I did.

18 BY MR. CARTER:

19 Q. And did you send those by e-mail?

20 A. Yes, I did.

21 Q. Okay. And so it follows that
22 counsel at White & Case would be in possession of
23 your invoices, correct?

24 MR. MAHAFFEY: Objection.

1 THE WITNESS: Yes, they would
2 be.

3 MR. CARTER: Counsel, could we
4 request that you provide copies of
5 Mr. Pasley's invoices?

6 MR. MAHAFFEY: Mr. Pasley's
7 invoices, as he -- as he said, include
8 descriptions of the work that he's done,
9 and we consider that to be work product.

10 MR. CARTER: Well, they may or
11 may not depending on the nature of the
12 description. I think probably not. But
13 even if that were the case, then that
14 would simply be a matter of redaction,
15 and we could address whether or not those
16 redactions are appropriate.

17 Can you provide copies of the
18 invoices with any redactions you seem
19 appropriate?

20 MR. MAHAFFEY: Well, like I
21 said, we believe these to be work
22 product. We don't believe you're
23 entitled to these under Federal Rule 26.

24 MR. CARTER: Okay. The

1 provision of invoices issued by experts,
2 including the content of the descriptions
3 subject to appropriate privilege
4 redactions, has been a standard feature
5 of the MDL litigation, and every party in
6 the litigation on the defendants' and
7 plaintiffs' side has provided those
8 materials upon request in connection with
9 expert depositions.

10 Are you aware that that's the
11 practice in the MDL?

12 MR. MAHAFFEY: We're aware of
13 certain practices by other parties
14 besides Al Rajhi Bank, but our position
15 is that these are work product and they
16 you are not entitled to them under the
17 federal rules.

18 MR. CARTER: Okay. So you're
19 refusing to provide them?

20 MR. MAHAFFEY: Well, counsel,
21 I'm not being deposed here. You have our
22 position. I think we can move on.

23 MR. CARTER: No. No. We may
24 actually have to stop the deposition to

1 call the magistrate judge. So I'm trying
2 to assess whether or not that's necessary
3 five minutes in.

4 MR. MAHAFFEY: I don't think
5 it's necessary five minutes in to call
6 the magistrate judge, but we're not going
7 to give you right here the itemized
8 invoices.

9 MR. CARTER: All right. Well,
10 let me -- let me try and address part of
11 this, and then we'll figure out how to
12 proceed.

13 BY MR. CARTER:

14 Q. Mr. Pasley, when did you begin work
15 in connection with your expert report in this
16 matter?

17 A. My invoices cover October to the
18 current date.

19 Q. So they cover October of 2023?

20 A. Correct.

21 Q. Through the date of today where
22 we're sitting here?

23 A. Yes. The last invoice I submitted
24 was in the middle of December.

1 Q. Okay. And the invoice that you
2 submitted in the middle of December, did that
3 cover work through the preparation of your expert
4 report?

5 A. No, I have not submitted an invoice
6 for January yet.

7 Q. Well, your expert report in this
8 matter, as I see it, was signed on December 18th
9 of 2023, correct?

10 A. That is correct.

11 Q. Okay. And --

12 A. And I submitted an invoice after
13 that date.

14 Q. And so the invoice you submitted
15 after that date covered all the work that you had
16 done up to the point of the issuance of your
17 expert report, correct?

18 A. That is correct.

19 Q. And the period of time that that
20 invoice covered was a date in October through
21 December 18th or so --

22 A. It was --

23 Q. -- of 2023?

24 A. -- December 18th. Yes, that is

1 correct.

2 Q. And do you remember the date, the
3 first date for work covered by your invoice in
4 October?

5 A. No, I do not. It was, I believe,
6 early October, but I did not go back and look.

7 Q. And do you recall the total number
8 of hours that were included in that invoice?

9 A. It's -- October's invoice or all the
10 invoices?

11 Q. October through the one covering
12 December 18th.

13 A. It was approximately --
14 approximately 500 hours, if my math is correct.

15 Q. 500 hours total from the time of
16 your engagement in October through the completion
17 of your report on December 18th?

18 A. I apologize. My math is not very
19 good. It's 50 hours.

20 Q. 50 hours?

21 A. Yes.

22 Q. Okay. So over the course of the
23 time from when you were retained in this matter
24 until the date on which you issued your expert

1 report, you engaged in a total of 50 hours of
2 work, correct?

3 A. Approximately, yes.

4 Q. Okay. And that included the
5 drafting of your report itself?

6 A. Correct.

7 Q. And how many hours were encompassed
8 in the billing for the drafting of your report?

9 A. I really don't know. I did not
10 break it down as such. I did not -- I did not
11 look up that particular fact.

12 Q. Are you able to estimate how many
13 hours you spent drafting your 20-page report?

14 A. No, I do not know.

15 Q. You have no estimate about how much
16 time you spent writing the report?

17 A. Maybe 20, 25 hours, but it's a
18 guess. I'm sorry.

19 Q. Okay. But would you say that that
20 guess is a fair estimate?

21 A. It's as good of a guess as I can
22 come up with.

23 Q. Okay. And so then the remainder of
24 the 50 hours would have been the time that you

1 spent reviewing materials in the case?

2 A. Yes, that is correct.

3 Q. Okay.

4 A. Which is, in effect, all part and
5 parcel of the same endeavor.

6 Q. And did you bill for all of your
7 time?

8 A. Yes, I did.

9 Q. Okay. And did you prepare the draft
10 of your report yourself?

11 A. Yes, I did.

12 Q. And would your invoices itemize the
13 amount of time you dedicated to certain tasks
14 associated with your work?

15 A. It would identify what I had read,
16 for instance, a particular deposition. It would
17 indicate that I was working on my report over a
18 particular period of time, but it did not break
19 material down by five or 10 or 15 minutes. It was
20 for the -- for the day.

21 So I could have been reading a
22 deposition, working on the report, looking up
23 material, and I would put down a total number of
24 hours for that particular day.

1 Q. And within the description of the
2 hours for that day, your invoices describe the
3 things that you reviewed and the things that you
4 researched?

5 A. Yes.

6 Q. And does it identify the things that
7 you reviewed with particularity?

8 MR. MAHAFFEY: Objection.

9 You can answer yes or no.

10 THE WITNESS: I believe it
11 did, yes.

12 BY MR. CARTER:

13 Q. Okay. So those invoices reflect the
14 things that you reviewed in connection with your
15 report, correct?

16 A. For the most part, yes.

17 MR. CARTER: Okay. Counsel,
18 we're going to reiterate our demand for
19 production of the invoices, subject to
20 any appropriate redactions for truly
21 privileged materials, and we may elect to
22 take the matter up with the magistrate at
23 a break.

24 MR. MAHAFFEY: Take that under

1 advisement.

2 BY MR. CARTER:

3 Q. Mr. Pasley, we've just discussed
4 that you did, in fact, issue an expert report in
5 this matter, right?

6 A. Yes, I did.

7 Q. And that report was issued on
8 December -- or at least signed on December 18th of
9 2023?

10 A. Yes, that is correct.

11 Q. And I'd like to mark as Exhibit 2,
12 Pasley 2, a copy of your expert report, and for
13 your convenience I have --

14 A. (Indicates).

15 Q. I see you have a physical copy
16 already in front of you?

17 A. I have a copy. Thank you.

18 O. Great.

19 (Document marked for

identification as Pasley Exhibit 2.)

21 BY MR. CARTER:

22 Q. Mr. Pasley, you're aware that under
23 the federal rules your report must include a
24 complete statement of all the opinions you intend

1 to express in the case?

2 A. Yes, I understand that.

3 Q. And does your report include all of
4 the opinions you intend to express in this
5 litigation?

6 A. There may be additional opinions
7 going forward, but as of this point in time, it
8 does contain all of my opinions.

9 Q. Okay. And in terms of additional
10 opinions going forward, is there something that
11 you expect to do, or are you just allowing for the
12 possibility that that could happen?

13 A. Just allowing for the possibility of
14 that happening.

15 Q. You have no current expectation of
16 issuing a supplemental report, correct?

17 A. That is correct.

18 Q. And under the federal rules, are you
19 aware that you're also required to identify all
20 the bases and reasons for the opinions you're
21 expressing?

22 A. Yes, I understand that.

23 Q. Does your report do so?

24 A. I believe so.

1 Q. And your report is required to
2 identify all of the facts and data you considered
3 in forming your opinions.

4 Does the expert report marked as
5 Exhibit 2 do that?

6 A. Yes, I believe so.

7 Q. Turning to Appendix I of your expert
8 report, which includes the Materials Considered?

9 A. Yes.

10 Q. You've itemized nine items with
11 specificity, correct?

12 A. That is correct.

13 Q. And then in front of that, you
14 indicate that you also reviewed materials
15 referenced in your report and in plaintiffs'
16 expert reports and appendices, correct?

17 A. That is correct.

18 Q. Did you review all of the materials
19 referenced in plaintiffs' expert reports and
20 appendices?

21 A. No, I did not.

22 Q. So you reviewed some of the
23 materials referenced in plaintiffs' expert reports
24 and appendices but not all of them?

1 A. The reports were extremely lengthy
2 and replete with footnotes and documents to
3 reference material. I read through the report. I
4 did not look at the -- at all the underlying
5 reference material.

6 Q. Okay. So looking at your report and
7 the description of the Materials Considered,
8 there's no way for me to tell which materials you
9 did, in fact, look at and those that you did not?

10 A. I tried to cite to the plaintiffs'
11 experts' reports as best I could. I did not
12 necessarily reference the particular documents
13 that they footnoted in their reports.

14 Q. But your description here says that
15 your review included a review of materials
16 referenced in plaintiffs' expert reports and
17 appendices, but it doesn't tell me which -- which
18 of those you reviewed, correct?

19 A. That is correct.

20 Q. Your expert report includes a
21 relatively extensive discussion of your
22 background?

23 A. It's a couple of pages, yes.

24 Q. I'm not going to go through all of

1 your background, but I do want to ask you a few
2 questions.

3 You indicate in your report that
4 following your extensive period of working for the
5 government, you were with Bank of America in its
6 Bank Secrecy Act section; is that correct?

7 A. That is correct.

8 Q. Okay. And looking at your
9 curriculum vitae that's attached to your report,
10 it appears that that engagement lasted for only a
11 few months; is that correct?

12 A. It was approximately six months.

13 Yes, that is correct.

14 Q. Was there a particular reason why
15 your employment with Bank of America spanned only
16 a six-month period?

17 A. They indicated to me at the time
18 that there was a reduction in force that the bank
19 was undertaking. There is some background
20 material that is involved as well, if you want me
21 to go into it.

22 Q. Sure.

23 A. Okay. After I left the OCC, I was a
24 whistleblower in connection with what I viewed as

1 improper activity on the part of one of my
2 supervisors. That did not sit well with the then
3 chief counsel of the OCC, and she contacted the
4 bank after I went with the bank and informed them
5 that she did not want to have any dealings with me
6 at the OCC. And I believe that was one of the
7 reasons why I was let go.

I brought a suit under the Merit
Systems Protection Board against the OCC and
settled the case on a very favorable basis from my
perspective.

12 Q. And what was the nature of the
13 conduct raised in your whistleblower notification?

14 A. My supervisor was engaged in what
15 appeared to be an improper relationship with a
16 female attorney of another division to whom he was
17 assigning cases and for whom he was recommending
18 awards. And people in the division, not at my
19 behest or with my knowledge, followed the two
20 people, my supervisor and the woman, to local
21 hotels a couple of times.

22 And so I put that into my
23 whistleblower complaint.

24 O. So the whistleblower complaint

1 didn't have anything to do with the relationship
2 between the Office of the Comptroller of Currency
3 and any financial institution?

4 A. That is correct.

5 Q. Did you pursue any claim against
6 Bank of America?

7 A. No, I did not.

8 Q. You mentioned earlier the OCC, and
9 just for the benefit of folks who may review your
10 testimony at some point who aren't familiar with
11 some of these terminology, I understand that to
12 refer to the Office of the Comptroller of the
13 Currency, correct?

14 A. That is correct.

15 Q. You worked at the OCC for a number
16 of years?

17 A. For 30 years, yes.

18 Q. And can you describe in sort of
19 broad brush strokes what you did with the OCC?

20 A. I was primarily assigned to the
21 enforcement and compliance division as an
22 attorney, a senior attorney, and then assistant
23 director, and that's a division within the law
24 department of the OCC that takes administrative

1 actions against banks and individuals and
2 litigates those actions when necessary.

3 Q. Did that work review or did that
4 work involve assessments of whether individual
5 financial institutions had violated their
6 anti-money laundering or counter-terror financing
7 obligations?

8 A. Yes, it did, primarily violations of
9 law, rules and regulations in general, and unsafe
10 and unsound banking practices.

11 Q. Were any of the reviews you
12 conducted while at OCC focused on possible
13 terrorist activities specifically?

14 A. Well, AML, anti-money laundering and
15 counterterrorism financing really, you know, are
16 viewed in a combined fashion, but the work that I
17 engaged in was primarily banking practices and
18 banking conditions and, to an extent, towards the
19 end of my tenure anti-money laundering.

20 Q. Were you involved in conducting any
21 reviews of failures by financial institutions to
22 fulfill their anti-money laundering obligations?

23 A. Yes, I believe I was.

24 Q. And how many such investigations

1 were you involved in?

2 A. At this point in time, I really
3 can't remember.

4 Q. Can you tell me just in general
5 terms what that kind of review would entail?

6 A. It would be based primarily on
7 reports of examination that were conducted and
8 produced by national bank examiners, and they
9 would detail their conclusions as to violations of
10 law, rule, or regulation, or unsafe and unsound
11 banking practices. I would review those reports
12 and recommend administrative action as appropriate
13 to the higher-ups within the OCC.

14 Q. And the -- I'm sorry. Was the
15 national banking?

16 A. National bank examiners.

17 Q. And the national bank examiners,
18 what types of materials would they typically
19 review for purposes of providing the report to you
20 on particular banks' AML practices?

21 A. They would look at the books and
22 records of the national bank and policies and
23 procedures that the bank engaged in and whether
24 they complied with the policies and procedures and

1 with anti-money laundering and counterterrorism
2 financing regulations.

3 Q. And would the bank examiners as part
4 of that process generally review any existing
5 external or internal audits in the possession of
6 the bank?

7 A. Yes, they would.

8 Q. And why would they do that?

9 A. That would be part of the bank's
10 recordkeeping process. It would be a record
11 within the national bank that the examiners would
12 look at. They look at -- they can look at
13 anything and everything within the bank.

14 Q. The audits would be relevant to the
15 assessment of whether or not the bank complied
16 with its AML requirements, correct?

17 A. Potentially, that might be one
18 factor that the national bank examiners would look
19 at, not necessarily the only one or not
20 necessarily one they would look at each and every
21 time.

22 Q. But as a general matter in your
23 experience, did the national bank examiners
24 typically review audits in the possession of the

1 bank they were examining as part of their process?

2 A. I really can't say it was a typical
3 practice. I would say from time to time they
4 would look at the audit reports internal and
5 external as they were deemed to be relevant.

6 Q. If the reports specifically
7 concerned an audit of anti-money laundering, would
8 you expect them to have reviewed the audit in
9 conjunction with an anti-money laundering scope
10 review?

11 A. If the bank examiners were
12 conducting an anti-money laundering or
13 counterterrorism financing examination, yes.

14 Q. Turning back to your experience, you
15 mentioned that you were involved in three cases
16 involving Section 311 sanctions, correct?

17 A. Two or three, yes. I was assigned
18 to the Department of Treasury to help implement
19 regulations pursuant to the USA PATRIOT Act.

20 Q. And at a very high level, what is
21 Section 311 of the PATRIOT Act?

22 A. It provides for the ability of the
23 U.S. government to impose sanctions on financial
24 institutions or individuals for various untoward

1 activity in the area of anti-money laundering or
2 counterterrorism financing.

3 Q. And the cases that you were involved
4 in while you were detailed to the Department of
5 the Treasury, which banks did they involve?

6 A. They involved countries, not banks.

7 Q. Which countries did they involve?

8 A. I believe the primary case that I
9 worked on involved the country of Naru, and I
10 believe I also worked on a matter involving the
11 Seychelles.

12 Q. And then -- I'm sorry.

13 Did either of those cases involve
14 issues related to terrorism financing?

15 A. It was -- addressed both anti-money
16 laundering and counterterrorism financing.

17 Q. Was there -- were there specific
18 suspected terrorism financing transactions that
19 were identified as a result of the -- or that
20 prompted the sanction?

21 A. I don't remember that there were.

22 They were focused primarily on the conduct of the
23 -- of the countries in general with regard to
24 counterterrorism financing and anti-money

1 laundering, that they had very poor procedures and
2 were not conducting themselves properly.

3 Q. You mention in your report an
4 additional engagement as an expert witness in
5 which you testified on behalf of a Middle Eastern
6 bank that was unfairly, in your opinion, the
7 subject of a Section 311 sanction, correct?

8 A. That is correct.

9 Q. And what bank was that?

10 A. FBME. It was a bank located in
11 Cypress. Its headquarters were in Lebanon.

12 Q. And what was the nature of the
13 allegation against FBME?

14 A. The allegation was that they were
15 engaged in money laundering activity, were not
16 conducting themselves properly, and as a result of
17 the 311 order, the country of Cypress canceled
18 their -- their license to conduct banking.

19 Q. Had the regulator in Cypress taken
20 action against FBME prior to the section --
21 Section 311?

22 A. No, they had not. The sanction was
23 issued, I think, on a Friday. Cypress without any
24 review or investigation engaged in their activity

1 on Saturday or Sunday.

2 Q. Given that sequence of events, is it
3 fair to say that the regulatory activity of
4 Cypress had failed to identify a problem that then
5 arose to the level of the need for the U.S. to
6 impose a sanction?

7 MR. MAHAFFEY: Objection as to
8 the form.

9 THE WITNESS: It was really
10 the other way around.

11 The U.S. government imposed a
12 311 sanction and then Cypress, the
13 government of Cypress took its action
14 within 24-48 hours without any review or
15 analysis.

16 BY MR. CARTER:

17 Q. The bank at issue, FBME, was subject
18 to regulatory oversight by the applicable
19 regulator in Cypress prior to that time, correct?

20 A. That is correct.

21 Q. And as part of that regulatory
22 oversight preceding the Section 311 sanction, did
23 the regulatory authority in Cypress identify a
24 problem with the bank?

1 A. I don't think so, no.

2 Q. And was there any particular
3 allegation that FBME had been used to finance
4 terrorism?

5 A. No, not that I recall.

6 Q. You identify in Appendix II of your
7 report, which is your CV, your experience as an
8 expert witness; is that correct?

9 A. I believe it does, yes, in general.

10 Q. It's on page 2, I think, of your --

11 A. Yes.

12 Q. -- CV?

13 Do you have that in front of you?

14 A. Yes, I do.

15 Q. And it says that you've been
16 designated as an expert witness in approximately
17 18 cases, correct?

18 A. Yes, and this would be the 19th
19 case.

20 Q. And aside from the present matter,
21 how many of those 18 cases involved allegations of
22 terror financing activities?

23 A. A number of them involved
24 allegations of anti-money laundering and in

1 general counterterrorism financing, not
2 necessarily with any particularity.

3 Q. Did any of them involve particular
4 allegations that the bank's accounts were used to
5 fund terrorism?

6 A. I don't think so, no.

7 Q. Okay. And did any of them arise
8 from civil claims brought by terrorism victims?

9 A. No, I don't believe so. No.

10 Q. You mention two cases in which
11 you've testified within the last few years. The
12 first is Davis v. JP Morgan Chase Bank.

13 Do you see that?

14 A. Yes, I do.

15 Q. What was that case about?

16 A. I'm having a hard time recalling the
17 details. I believe it may well have been a
18 lawsuit brought by victims of a Ponzi scheme
19 against the bank that maintained accounts for the
20 con artist engaged in the Ponzi scheme.

21 Q. And I take it that you represent --
22 that you were an expert for the bank in that case?

23 A. That is correct.

24 Q. And you offered opinions that the

1 bank committed no wrongdoing?

2 A. Yes, that is correct, and among
3 other opinions.

4 Q. And do you recall what the
5 resolution of the case?

6 A. I believe it was settled.

7 Q. Do you recall the amount of the
8 settlement?

9 A. No, I was not informed of that.

10 If I'm not mistaken, if I could
11 correct myself. I believe the case was dismissed.

12 Q. So it was either dismissed or
13 settled?

14 A. I believe it was dismissed.

15 Q. And do you recall the -- the reason
16 for the dismissal?

17 A. That there was not -- it was a
18 failure to state a claim of action.

19 Q. And the case of GSR -- GSR Markets
20 V. Diana McDonald and Wells Fargo, what was that
21 about?

22 A. It involved an entity in Spain that
23 purchased \$4 million worth of Bitcoins. It sent
24 \$4 million by wire to an attorney, Diana McDonald,

1 who's located in Florida as a sole practitioner.
2 She absconded with half the money, did not send it
3 on to the seller of the Bitcoins and only provided
4 \$2 million back to the purchaser of the Bitcoins.
5 So they were out \$2 million.

6 Diana and -- and GSR, who was a
7 purchaser of the Bitcoins, brought suit against
8 the bank because they maintained an account for
9 Diana McDonald.

10 Q. And you represented the bank in that
11 matter?

12 A. I did.

13 Q. And it had nothing to do with
14 terrorism?

15 A. No, just the sale of Bitcoins.

16 Q. Your summary of your experience in
17 curriculum vitae indicate that you've also engaged
18 in consulting work subsequent to your term with
19 the government, correct?

20 A. Yes, after I left Bank of America.

21 Q. Okay. And at a very general level,
22 what types of consulting work do you do aside from
23 serving as an expert witness?

24 A. That's primarily it. Serving as an

1 expert witness primarily on behalf of financial
2 institutions involving allegations of anti-money
3 laundering -- of -- of violations of anti-money
4 laundering and CFT regulations.

5 Q. And in the 18 cases you reference in
6 your curriculum vitae where you've served as an
7 expert witness, have you worked for the financial
8 institution in all of those cases?

9 A. Not in all of those cases, no. One
10 case involved assisting an NFL linebacker in a
11 suit against Bank of America.

12 Q. What was the nature of that suit?

13 A. The nature of the suit was the NFL
14 player had deposited millions of dollars with the
15 bank for investment because he didn't want to go
16 to a small institution that might not be able to
17 handle that kind of money.

18 The account representatives handling
19 his funds left the bank, took the account with
20 them, and then absconded with the money.

21 Q. And the suit was against Bank of
22 America?

23 A. Yes, that is correct.

24 Q. And that suit occurred after Bank of

1 America terminated your employment?

2 A. It was long after, yes.

3 Q. And that case in which you
4 represented the plaintiff in a lawsuit against
5 Bank of America is the only case in which you've
6 served as an expert where you represented the
7 plaintiff suing the bank?

8 A. There may have been one or two other
9 cases.

10 Q. You can't remember right now?

11 A. I can't remember the details. I'm
12 sorry.

13 Q. Okay. Have you ever done any
14 consulting work for banks in the Middle East?

15 A. Other than the bank that we just --

16 Q. Correct.

17 A. -- discussed?

18 Q. Other than FBME.

19 A. Correct. That is correct.

20 Q. That's the only one?

21 A. That is correct.

22 Q. Okay. Just I think the way that our
23 exchange went, there may be some confusion in the
24 transcript. So let me just try to clarify this.

1 A. Please.

2 Q. Aside from your engagement on behalf
3 of FBME, have you ever been engaged to serve as a
4 consultant for any financial institution in the
5 Middle East?

6 A. Not any particular financial
7 institution. I did work on a FATF review of the
8 laws, rules, and regulations of Kuwait.

9 Q. On behalf of what client?

10 A. It would be on behalf of Royal Bank.

11 Q. Have you ever been engaged by any
12 government in the Middle East?

13 A. No.

14 Q. Have you ever done any prior work on
15 behalf of Al Rajhi Bank?

16 A. No, I have not.

17 Q. Have you ever worked with a firm
18 called Smith Regulatory Strategies?

19 A. I have consulted with Brian Smith,
20 who operates that company. He's a former chief
21 counsel of the OCC. I have worked with him on a
22 couple of assignments, but it's been quite a
23 while.

24 Q. Are those assignments reflected

1 within the summary you provided in your CV?

2 A. I don't think so because I wasn't
3 working as an expert witness in those cases, more
4 as an advisor, a consultant.

5 Q. I had asked prior whether or not
6 your consulting work spanned any areas other than
7 serving as an expert witness, and I understand you
8 to have told me that it did not.

9 Am I now understanding that you have
10 done consulting work since leaving the government
11 outside of the expert witness arena?

12 MR. MAHAFFEY: Objection as to
13 form. Misstates testimony.

14 THE WITNESS: Yes, you are
15 correct. I apologize for the
16 misstatements or confusion.

17 BY MR. CARTER:

18 Q. And the consulting work you've done
19 with Smith Regulatory Strategies, has that
20 involved any clients in the Middle East?

21 A. No, it did not.

22 Q. And just so again I'm clear, am I
23 correct that you have not done any consulting work
24 unrelated to services and expert testimony for any

1 bank or client in the Middle East prior to this
2 engagement?

3 A. That is correct.

4 Q. And I take it that you haven't done
5 any work for the Saudi Arabian Monetary Authority
6 at any time?

7 A. That is correct.

8 Q. Did you have any dealings with the
9 Saudi Arabian Monetary Authority during your term
10 at OCC?

11 A. No, I did not.

12 Q. Did you have any involvement in the
13 U.S. government's engagements with Saudi Arabia
14 concerning terrorist financing issues after
15 September 11, 2001?

16 A. No, I did not.

17 Q. Have you ever had any role during
18 your time with the government relating to the
19 Executive Order 13224 designation program?

20 A. I'm not directly familiar with that.
21 So the answer would be no.

22 Q. What about the other designation
23 programs established by the United States for
24 foreign terrorist organizations or individuals who

1 have disrupted the Middle East peace process?

2 Were you ever involved with those?

3 MR. MAHAFFEY: Objection as to
4 the form.

5 THE WITNESS: No, I was not.

6 BY MR. CARTER:

7 Q. And in your post-government service,
8 have you ever done any work relating to Executive
9 Order 13224 designations?

10 A. No, other than my only involvement
11 was in connection with designations under Section
12 311 of the USA PATRIOT Act that we discussed
13 earlier.

14 Q. So with regard to Executive Order
15 13224 designations, you have never done any work
16 in that space?

17 A. That is correct.

18 Q. And what about with respect to any
19 of the other designation -- terrorism designation
20 programs aside from Section 311?

21 MR. MAHAFFEY: Objection as to
22 the form.

23 THE WITNESS: No, I have not.

24 BY MR. CARTER:

1 Q. Turning to your -- the body of your
2 report, which again we've marked as Exhibit 2.

3 There is a summary of your opinions
4 on page 3 which includes subheadings A through E,
5 correct?

6 A. Yes, I see that.

7 Q. And those summarize your principal
8 opinions in the case?

9 A. Yes, they do.

10 Q. And the first one concerns the
11 treatment of CIA reports and post-9/11 sanctions
12 designations in the reports of Jonathan Winer and
13 Evan Kohlmann, who are plaintiffs' experts,
14 correct?

15 A. That is correct.

16 Q. And your discussion of the CIA
17 reports commences on page 5 of your report,
18 correct?

19 A. Yes, I believe it does.

20 Q. If you can turn to that section, I'd
21 like to ask you some questions about this section
22 of your report.

23 A. Okay.

24 Q. On page 5, you introduce this

1 section of your report by stating:

2 "Time and time again throughout
3 their reports, the plaintiffs' experts rely on
4 reports and cables generated by the CIA, the FBI,
5 the State Department, and other government or
6 quasi-government agencies to support their
7 opinions that the bank failed to flag allegedly
8 suspicion customers and transactions pre-9/11."

9 Do you see that?

10 A. Yes, I do.

11 Q. And in connection with that
12 criticism that you direct at plaintiffs' experts,
13 you include a footnote citing to sections of the
14 Winer and Kohlmann reports, correct?

15 A. Yes. That sentence itself is not a
16 criticism. It's a statement.

17 Q. And --

18 A. Just to be clear.

19 Q. But your report does criticize them
20 for the methodology that you characterize in the
21 sentence --

22 A. Yes, definite --

23 Q. -- is that fair?

24 A. Yes, it is fair.

1 Q. Okay. And so Footnote 1 is where
2 you provide examples of the conduct that you're
3 addressing, correct?

4 A. That is correct.

5 MR. CARTER: Okay. I'd like
6 to take a look at the relevant sanctions
7 that you cite from Mr. Winer's report,
8 which we will mark as Exhibit 3 and it is
9 at Tab 4.

10 (Document marked for
11 identification as Pasley Exhibit 3.)

12 BY MR. CARTER:

13 Q. And if it would be convenient for
14 you, Mr. Pasley, I do have an extra hard copy --

15 A. Okay.

16 Q. -- which might make it easier.

17 A. Okay.

18 Q. There you go.

19 A. Thank you.

20 Q. With regard to this statement that
21 we just summarized in your report, you agree with
22 me that you cite to Sections 6.7 through 6.10 in
23 Mr. Winer's report?

24 A. Yes, I see that.

1 Q. And turning to the beginning of that
2 section on page 48, what is the subject heading of
3 that section of Mr. Winer's report?

4 A. Okay. I'm sorry. I'm a little
5 lost. 6.7 I believe starts on page 53.

6 Q. I'm sorry. 6.7 is a part of
7 Section 6 of the report?

8 A. Yes. Yes, I understand that. Yes.
9 Okay.

10 Q. And so if you go to the beginning of
11 Section 6 on page 48?

12 A. Right. I'm there.

13 Q. What is the subject matter of
14 Section 6 of Mr. Winer's report?

15 A. The heading is "Question 4: Is
16 there evidence that al-Qaeda relied on sympathetic
17 financiers and financial institutions to raise and
18 move money prior to September 11, 2001?"

19 Q. Would you agree with me that
20 Mr. Winer's description of this section of his
21 report indicates that it addresses how al-Qaeda
22 raised and moved money, correct?

23 MR. MAHAFFEY: Objection as to
24 the form.

1 THE WITNESS: In general, I
2 believe that's right. I can't point to
3 specifics without going through it in
4 more detail.

5 BY MR. CARTER:

6 Q. Okay. Well, does this section of
7 Mr. Winer's report say anything at all about Al
8 Rajhi Bank's AML practices or failure to flag
9 suspicious transactions?

10 MR. MAHAFFEY: Objection as to
11 the form.

12 THE WITNESS: I'm not sure
13 just looking at this, you know, right now
14 without -- without being directed to
15 particular parts of Section 6.

16 BY MR. CARTER:

17 Q. Well, let's look at the sections
18 that you cited in relation to the statement of
19 your report that Mr. Winer time and again cites
20 reports generated by the CIA to support opinions
21 that the bank failed to flag allegedly suspicious
22 customers and transactions, and you cited to
23 Sections 6.7 through 6.10.

24 Where in Sections 6.7 to 6.10 does

1 Mr. Winer say anything at all about Al Rajhi
2 Bank's failure to flag suspicious customers or
3 transactions?

4 MR. MAHAFFEY: Objection as to
5 the form.

6 THE WITNESS: (Reviews
7 document.)

8 Well, 6.8.5 refers to the
9 bank, and it's a general understanding
10 that Mr. Winer is addressing the
11 deficiencies at the bank throughout his
12 entire 200-page report.

13 BY MR. CARTER:

14 Q. 6.8.5 you say refers to the bank?

15 A. Yes.

16 MR. MAHAFFEY: Objection as to
17 form.

18 BY MR. CARTER:

19 Q. What does it say about the bank?

20 A. It discusses the bank's subpoena and
21 the CIA report released under Executive Order
22 14040.

23 Q. Where does it say anything about the
24 conduct of the bank in that section that you just

1 read to me?

2 A. It doesn't in particular.

3 Q. And the reference to ARB there
4 refers to plaintiffs' Al Rajhi Bank's subpoena,
5 meaning the subpoena plaintiffs issued in this
6 litigation?

7 A. That is correct.

8 MR. MAHAFFEY: Objection as to
9 the form.

10 BY MR. CARTER:

11 Q. And it doesn't say anything about
12 suspicious activity or red flags, does it?

13 A. No, not there.

14 MR. MAHAFFEY: Objection as to
15 the form.

16 BY MR. CARTER:

17 Q. And if we go to the Table of
18 Contents of Mr. Winer's report on page 2?

19 MR. MAHAFFEY: Counsel, if I
20 could just object. You've asked him to
21 identify certain provisions in a 20-page
22 section of the report, and now you're
23 asking him to flip back to the Table of
24 Contents while he's still reviewing that

1 section. Can he have an opportunity to
2 finish reviewing 6.7 to 6.10?

3 MR. CARTER: He can.

4 MR. MAHAFFEY: Okay.

5 MR. CARTER: If it's
6 reasonable. These are the sections cited
7 in his report in support of his opinion.

8 MR. MAHAFFEY: Okay.

9 MR. CARTER: So one would
10 expect him to be able to answer the
11 questions.

12 MR. MAHAFFEY: Well, again,
13 counsel, you're asking him to identify
14 specific provisions in a 20-page section.

15 THE WITNESS: (Reviews
16 document.)

17 Well, 6.9.5.11 refers to the
18 Al Rajhi family. I mean, there are
19 references to the bank throughout the
20 200-page report. The report speaks for
21 itself.

22 BY MR. CARTER:

23 Q. Well, I agree the report speaks for
24 itself.

1 And what I'm asking you is: Where
2 in this Section 6 in the provisions that you cite,
3 6.7 through 6.10, does it say anything about the
4 issue you raise in your report concerning the
5 bank's failure to flag suspicious customers or
6 transactions?

7 A. I'd have to read through it a little
8 more carefully, and I don't think you want me to
9 spend the time to do that.

10 The report speaks for itself.

11 Q. Okay. So sitting here, you're
12 unable to identify for me any provision of the
13 section of the report that you cited in your
14 report that actually refers to the bank's failure
15 to flag suspicious customers or to red flag
16 transactions?

17 MR. MAHAFFEY: Objection as to
18 the form.

19 THE WITNESS: Well, 6.10.3.10
20 and 11 refers to the bank in the CIA
21 reports, and it also says in 6.10.3.11
22 that -- that ARB, other than a single
23 sentence preceded by a
24 two-and-a-half-inch redaction, it states

1 "Al Rajhi financial ties to Islamists is
2 inconclusive."

3 BY MR. CARTER:

4 Q. Right.

5 And those talk about the bank's
6 relationship to Islamists, but not about its AML
7 or its suspicious transaction reporting
8 compliance, do they?

9 A. It may not. I would have to, with
10 all due respect, study this section a little more.

11 Q. Well, let's turn to the Table of
12 Contents of the report on Section 2, and there
13 Mr. Winer provides a Table of Contents and
14 describes what the different sections of his
15 report address.

16 Do you agree?

17 A. Yes, I see that. There are 12
18 section numbers, yes.

19 Q. And Section 9 of the report
20 specifically addresses Al Rajhi Bank's adherence
21 to Know Your Customer, AML, and Count-Terror
22 Financing best practices, correct?

23 A. Yes, I see that.

24 Q. And Section 10 addresses whether or

1 not Al Rajhi Bank ignored anti-money laundering or
2 counterterrorism financing red flags on accounts
3 of specific customers, correct?

4 A. Yes, that's correct.

5 Q. And that's distinct from the section
6 you cited in your report?

7 MR. MAHAFFEY: Objection as to
8 form.

9 THE WITNESS: They are
10 distinct, yes.

11 BY MR. CARTER:

12 Q. Doesn't Section 6 of the Winer
13 report address an entirely subject matter --
14 different subject matter than the failure to flag
15 suspicious customers and transactions that you
16 describe in your report?

17 MR. MAHAFFEY: Objection as to
18 the form.

19 THE WITNESS: Well, the
20 description of Section 6 here in the
21 Table of Contents -- not to argue with
22 you does -- talk about financial
23 institutions and al-Qaeda relying on
24 those financial institutions.

1 BY MR. CARTER:

2 Q. But it doesn't say anything about
3 those financial institutions' money laundering
4 practices or counterterrorism financing practices
5 does it?

6 MR. MAHAFFEY: Objection as to
7 form.

8 THE WITNESS: Again, I would
9 have to go through the 40-page -- 40
10 pages of this section in order to be able
11 to respond properly.

12 BY MR. CARTER:

13 Q. So we've taken a few minutes to look
14 at this.

15 I take it that you haven't found any
16 specific references in Section 6 as of yet to --

17 MR. MAHAFFEY: Objection.

18 BY MR. CARTER:

19 Q. -- money laundering or red flags?

20 MR. MAHAFFEY: Objection as to
21 form.

22 THE WITNESS: As I indicate,
23 this section is almost 40 pages in
24 length, and I've only had a few minutes

1 to read through it. I would have to
2 spend a lot more time looking through it.

3 BY MR. CARTER:

4 Q. Well, the sections that you cite in
5 your report aren't 40 pages in length?

6 A. No.

7 Q. And you cited them in your report.
8 Have you had a chance to look at
9 those?

10 MR. MAHAFFEY: Objection as to
11 form.

12 THE WITNESS: Okay. I've
13 answered as best I could.

14 MR. CARTER: Let's take a look
15 at Mr. Kohlmann's report and the sections
16 of his report that you cite.

17 And Mr. Kohlmann's report is
18 at Tab 3 and, if I'm remembering, this
19 will be Exhibit 4.

20 (Document marked for
21 identification as Pasley Exhibit 4.)

22 THE WITNESS: Thank you.

23 BY MR. CARTER:

24 Q. Okay. Again, focusing on the same

1 introductory statement in this section of your
2 report:

3 "Time and time again throughout
4 their reports, the plaintiffs' experts rely on
5 reports and cables generated by the CIA, the FBI,
6 the State Department, and other government or
7 quasi-government agencies to support their
8 opinions that the bank failed to flag allegedly
9 suspicious customers and transactions pre-9/11."

10 And with regard to that, you cite to
11 Mr. Kohlmann's report page 15 note 76 and page 20
12 note 125, correct?

13 A. Yes, that is correct.

14 Q. And looking first at Mr. Kohlmann's
15 report on page 15 note 76, the relevant text of
16 the report indicates that:

17 "CIA documents indicate that
18 Al-Haramain employee accounts in Albania
19 specifically received money from Al-Haramain's
20 official account at Al Rajhi Bank."

21 Do you see that?

22 A. Yes, I see that.

23 Q. Okay. Does Mr. Kohlmann there issue
24 any opinion about whether or not Al Rajhi Bank

1 failed in relation to those payments to flag a
2 suspicious transaction?

3 MR. MAHAFFEY: Objection as to
4 form.

5 THE WITNESS: I believe
6 that's implicit in this statement of the
7 report.

8 BY MR. CARTER:

9 Q. Do you know whether Mr. Kohlmann was
10 offered to testify as to anti-money laundering or
11 counterterrorism financing protocols governing
12 banks?

13 A. I would have to go back and look at
14 what his particular assignment was, but I believe
15 it encompassed that, yes.

16 Q. And turning to the next section of
17 the report that you cite in this section
18 criticizing the reliance on the CIA reports, on
19 page 20, Mr. Kohlmann states:

20 "IIRO's operations in Pakistan were
21 allegedly responsible for sponsoring 7 al-Qaeda
22 training camps in the region."

23 And that's the statement and
24 footnote you cite, correct?

1 A. Yes, that is correct.

2 Q. Okay. What does that have to do
3 with the argument you make about Al Rajhi Bank's
4 failure to flag suspicious customers or
5 transactions?

6 A. It may not directly, no.

7 Q. Are you an expert on al-Qaeda's
8 sources of funding prior to September 11, 2001?

9 A. No, I am not.

10 Q. Are you an expert on al-Qaeda's
11 relationships with charity organizations prior to
12 9/11?

13 A. No, I'm not.

14 Q. And are you -- do you -- are you an
15 expert on whether or not the International Islamic
16 Relief Organization provided support to al-Qaeda
17 prior to 9/11?

18 A. No, I'm not.

19 Q. Are you an expert on whether or not
20 the Al-Haramain Islamic Foundation provided
21 support to al-Qaeda prior to 9/11?

22 A. No, I'm not.

23 Q. And you're not offering opinions on
24 those issues?

1 A. No. I've been retained to be a
2 rebuttal witness with regard to Mr. Winer's and
3 Mr. Kohlmann's expert opinion reports.

4 Q. Well, Mr. Kohlmann's report
5 specifically addresses al-Qaeda's pre-9/11 support
6 network and relationships with certain charities.

7 You're not offering rebuttal
8 testimony concerning that subject matter, are you?

9 A. Maybe not specifically. My
10 assignment was to rebut in the context of my
11 expertise the expert opinion reports of Jonathan
12 Winer and Evan Kohlmann.

13 Q. Turning back to your report and in
14 particular your criticisms of Mr. Winer, does
15 Mr. Winer anywhere in his report argue that Al
16 Rajhi Bank should have been aware of the existence
17 of the cited CIA reports or the texts included in
18 them at the time they were created?

19 MR. MAHAFFEY: Objection as to
20 form.

21 THE WITNESS: He refers a
22 number of times specifically to the 2003
23 CIA report, which was not released until
24 20 years after that, that date. So the

1 bank could not have known about that CIA
2 report until the disclosure of it 20
3 years later in a heavily redacted form.

4 BY MR. CARTER:

5 Q. But -- but does he anywhere argue
6 that the bank should have had access to these CIA
7 reports at the time they were created?

8 MR. MAHAFFEY: Objection as to
9 form.

10 THE WITNESS: Well, by
11 definition, the bank could not have had
12 access to the reports, and Mr. Winer does
13 not dispute that.

14 BY MR. CARTER:

15 Q. So you agree that Mr. Winer does not
16 in his report claim that the bank should have had
17 access to the CIA reports at the time that they
18 were created, correct?

19 A. Correct.

20 MR. MAHAFFEY: Objection as to
21 form.

22 THE WITNESS: Correct.

23 BY MR. CARTER:

24 Q. Have you ever been a consumer of CIA

1 intelligence reporting?

2 A. When I was at the OCC, I had a very
3 high-level clearance and was provided from time to
4 time infrequently with classified material to
5 review and determine whether there was any
6 necessary follow-up. Some of those reports may
7 well have contained CIA reports or information
8 from CIA reports.

9 Q. Do you recall how frequently you may
10 have come into contact during your government
11 career with CIA intelligence reporting?

12 A. It was only in the last couple of
13 years of my tenure at the OCC and it was
14 relatively infrequent.

15 Q. Have you read the CIA reports in
16 this case?

17 A. I have read excerpts, I believe, if
18 not the entire report from 2003. It was contained
19 in the material provided to me.

20 Q. There are a number of CIA reports
21 that have been cited by Mr. Winer and
22 Mr. Kohlmann.

23 Has your review been limited to the
24 2003 report?

1 A. I believe it has, yes.

2 Q. And your report criticizes both
3 Mr. Winer and Mr. Kohlmann for their treatment of
4 CIA reports, including reports that you did not
5 review, correct?

6 A. Correct.

7 Q. You discuss in your report
8 designations, correct?

9 A. Yes, I do.

10 Q. And you offer an opinion that an
11 after-the-fact designation doesn't provide a basis
12 for asserting that the bank should have known
13 during a prior period, correct?

14 A. That is correct.

15 Q. Would you agree that designations
16 may be relevant in evaluating whether the
17 designated party was associated with terrorism at
18 a point in time prior to the designation?

19 A. That's not the point I was trying to
20 make but, yes, it is possible that that is
21 related.

22 Q. Okay. And do you happen to know
23 whether Mr. Winer and Mr. Kohlmann cite the
24 designations in support of their opinions that the

1 designated entities were, in fact, involved in
2 terrorism?

3 MR. MAHAFFEY: Objection as to
4 form.

5 THE WITNESS: I really can't
6 point exactly where in the 300 pages of
7 reports that they -- whether or not they
8 do so, but the implication is that --
9 implication is that the CIA reports do
10 cast aspersions on the particular NGOs.

11 BY MR. CARTER:

12 Q. And are you aware that the claims
13 against Al Rajhi Bank include allegations relating
14 to its relationship with the Al-Haramain Islamic
15 Foundation?

16 A. There are a number of references to
17 Al-Haramain, yes, that is correct.

18 Q. And was Al-Haramain Islamic
19 Foundation a customer of the bank?

20 A. I believe it held numerous accounts,
21 approximately 95 different accounts, at the bank.

22 Q. Do you know whether Al-Haramain was
23 designated subsequent to the September 11th
24 attacks?

1 A. It was -- well, not the headquarters
2 in Saudi Arabia, but various branches in other
3 countries I believe were designated.

4 Q. What's the basis for your statement
5 that the headquarters in Saudi Arabia was not
6 designated?

7 A. Okay. Upon reflection, it may well
8 have been, but it was way after 9/11.

9 Q. Do you have any understanding as to
10 what factors may have resulted in the designation
11 of that headquarters being deferred?

12 MR. MAHAFFEY: Objection as to
13 form.

14 THE WITNESS: No. I know that
15 there were branches of Al-Haramain
16 initially designated but not the
17 headquarters in Saudi Arabia, but then
18 the entire entity was designated, if I'm
19 not mistaken and the best of my
20 recollection.

21 Does that answer your
22 question?

23 BY MR. CARTER:

24 Q. To a degree.

1 Have you been made aware in
2 connection with your assignment that the director
3 of Al-Haramain in Saudi Arabia Aqil Al-Aqil was
4 also an Al Rajhi Bank customer?

5 A. I believe he was, yes.

6 Q. When was he designated?

7 A. It was post-9/11.

8 Q. Okay. But it was years before the
9 2008 designation of the headquarters, wasn't it?

10 A. Actually, I can't remember the
11 dates. I'm sorry.

12 Q. Again, you don't have any opinion as
13 to whether or not Al-Haramain was, in fact,
14 involved in supporting al-Qaeda before 9/11?

15 A. I have no knowledge one way or the
16 other.

17 Q. And do you have any opinion as to
18 whether or not Aqil Al-Aqil was involved in
19 supporting al-Qaeda before 9/11?

20 A. No, I do not.

21 Q. You reference a number of times in
22 your report protocols at the bank for the conduct
23 of audits.

24 Do you recall that?

1 A. Yes, I do have a discussion of the
2 audits.

3 Q. On page 8 of your report, you
4 discuss your views on whether or not the bank was
5 not materially compliant with Saudi Arabian
6 Monetary Authority rules and regulations, correct?

7 A. I'm sorry. Where are on page 8 are
8 we?

9 Q. On page 8 of your report, you have a
10 section that is introduced as indicating that
11 you're discussing instances of purported
12 noncompliance with SAMA regulations.

13 A. Yes, I see that. Yes, I see the
14 heading. I'm sorry.

15 Q. So that's the discussion in this
16 section of your report?

17 A. Yes, that is correct.

18 Q. And in the second paragraph, the
19 introductory section says:

20 "As a general matter, it can be
21 expected that the bank was routinely audited and
22 that any significant issues would have been
23 flagged as areas of correction and reported to
24 SAMA."

1 Do you see that?

2 A. Yes, I do.

3 Q. Now, why do you say "it can be
4 expected that the bank was routinely audited"?

5 A. Well, throughout the record and in
6 particular in Mr. Galloway's deposition, there's
7 evidence of the fact that the bank was routinely
8 audited on an internal and external basis, and
9 that SAMA conducted reviews or examinations of the
10 bank as well.

11 Q. Aside from Mr. Galloway's testimony,
12 do you have any other support for that
13 proposition?

14 A. Well, in the documents that I was
15 provided, there were extensive detailed audit
16 plans for the bank during the period of time,
17 during a two-year period.

18 And in addition, in the bank's
19 annual reports, there are contained in that the
20 cover page of four external audits between 1998
21 and 2001 conducted by Ernst & Young and
22 PriceWaterhouse.

23 Q. And there are different types of
24 audits, correct?

1 A. Yes, there are.

2 Q. There's many different types of
3 audits, right?

4 A. There can be, yes.

5 Q. And it's either a fact that the bank
6 was audited or it wasn't?

7 A. I guess you could say that, yes.

8 Q. And the way that you could verify
9 that would be to ask for the audits and to review
10 them, right?

11 MR. MAHAFFEY: Objection as to
12 form.

13 THE WITNESS: I believe so.

14 I believe that's correct, yes.

15 BY MR. CARTER:

16 Q. And did you ask Al Rajhi Bank in
17 connection with your work on this case to provide
18 copies of any audits?

19 MR. MAHAFFEY: Objection.

20 You can answer to the extent
21 your response does not reveal
22 communications with counsel.

23 THE WITNESS: Based on the
24 objection, I really can't answer that

1 question.

2 BY MR. CARTER:

3 Q. Well, can you tell me whether your
4 work in this case would have benefited from an
5 opportunity to have reviewed any existing audits
6 at Al Rajhi Bank covering the period 1998 through
7 2001?

8 A. I'm not sure I can answer that
9 correctly.

10 I believe that, as I indicated in
11 the annual reports, it indicated that there were
12 audits during this period of time and that no
13 problems were found.

14 In addition, SAMA disclosed to Juan
15 Zarate, a high official within the Department of
16 Treasury of the U.S., that Ernst & Young had done
17 a review of the bank and found no wrongdoings.

18 Q. Well, let's talk about the statement
19 in that diplomatic community -- communication
20 concerning the conversation between the Saudi
21 official and Mr. Zarate.

22 A. Yes.

23 Q. Have you read that diplomatic cable?

24 A. Yes, I have.

1 Q. And you say, it refers to a 2003
2 audit that the Saudi official represented had been
3 conducted of Al Rajhi Bank, right?

4 A. That is correct.

5 MR. CARTER: Why don't we mark
6 that document as the next exhibit.

7 MR. MAHAFFEY: Counsel, if I
8 can just interject. I don't want to
9 interrupt your line of questioning, but
10 next time you get to a good stopping
11 point, can we have a break?

12 MR. CARTER: Sure.

13 MR. MAHAFFEY: Thanks.

14 MR. CARTER: Scott, what tab
15 is that? It's September 27.

16 It's Tab 22.

17 (Document marked for
18 identification as Pasley Exhibit 5.)

19 BY MR. CARTER:

20 Q. And the reference in this diplomatic
21 cable to the Saudi official's assertion about a
22 review by Ernst & Young of Al Rajhi Bank is about
23 midway through.

24 Do you see it?

1 A. Yes.

2 Is there a way I can make this
3 document larger?

4 Q. Yeah, he's going to.

5 A. Okay. Thank you.

6 Q. Okay. So it says:

7 "In August, 2003, Al-Rajhi had a
8 full scope examination done by Ernst & Young. The
9 report did not indicate any wrong doings.
10 Assistant Secretary Zarate requested a copy of the
11 report. Al-Gaith said he would share the findings
12 of the examination."

13 That's what you were referring to
14 earlier?

15 A. Yes, I was. Yes, that's correct.

16 Q. Have you seen that report?

17 A. No, I have not.

18 Q. Okay. Would you have found that
19 helpful to see that report in connection with your
20 work in this matter?

21 MR. MAHAFFEY: Objection as to
22 form.

23 THE WITNESS: Again, I'm not
24 sure because I did have the additional

1 documentation, the audit plans, the
2 annual reports, and the statement from
3 SAMA, SAMA to the U.S. Treasury.

4 BY MR. CARTER:

5 Q. So you regard this generic statement
6 of no wrongdoings from a Saudi official to be a
7 sufficient replacement for an actual review of the
8 audit?

9 MR. MAHAFFEY: Objection as to
10 form.

11 THE WITNESS: It's really
12 hard to say. I would rely on the
13 representation of SAMA and of the cover
14 pages contained in the bank's annual
15 reports.

16 BY MR. CARTER:

17 Q. To the extent --

18 A. I did rely on that. I'm sorry.

19 Q. To the extent that the audit
20 actually exists and shows no wrongdoings, wouldn't
21 it be helpful to you in your work to try to defend
22 the bank in this case?

23 A. Well, I'm not sure. I've been
24 retained as a rebuttal witness, and I saw no

1 evidence to the contrary. No evidence that there
2 was an audit that criticized the bank in any way
3 with regard to AML or CFT.

4 Q. The audit referenced -- the alleged
5 audit referenced in this, are you aware that
6 plaintiffs requested a copy of this in discovery
7 with Al Rajhi Bank?

8 A. I'm not familiar with discovery
9 requests or discovery production, no.

10 Q. Are you --

11 A. That's not within the gambit of my
12 review.

13 Q. Well, are you aware that Al Rajhi
14 Bank has told plaintiffs that it is unable to
15 locate any audit corresponding to this
16 description?

17 MR. MAHAFFEY: Objection as to
18 form.

19 THE WITNESS: Again, the
20 discussions between Al Rajhi Bank and
21 you-all as counsel for the plaintiffs is
22 not within my purview. I'm not familiar
23 with it.

24 BY MR. CARTER:

1 Q. Well, you've cited to this report in
2 support of opinions you've offered in the case,
3 correct?

4 A. I cited to the annual report, yes.

5 Q. No. You cited to this statement
6 concerning this alleged audit, right?

7 A. Yes, I did. Yes.

8 Q. Okay. Don't you think the fact that
9 the audit might not exist would be relevant to
10 your opinions in this case?

11 A. It would be hard for me to believe
12 that the audit did not take place. I don't know
13 what the recordkeeping requirements are imposed on
14 Al Rajhi Bank in Saudi Arabia. I'm not an expert
15 in Saudi law.

16 Q. Okay. When you say it would be hard
17 for you to believe that it didn't take place, is
18 that because there is a reference to it by a Saudi
19 official in a meeting with a U.S. official?

20 MR. MAHAFFEY: Objection as to
21 form.

22 THE WITNESS: Yes, and there's
23 sworn testimony by bank representative, a
24 30(b) representative to that effect.

1 In addition, there are
2 reference or there's a cover page of the
3 audits between 1998 and 2001 in the
4 bank's annual reports.

5 BY MR. CARTER:

6 Q. Mr. Pasley, those are different
7 things.

8 A. Okay.

9 Q. Mr. Galloway in his deposition does
10 not at any point testify that this audit
11 referenced in the diplomatic cable actually
12 exists, does he?

13 MR. MAHAFFEY: Objection as to
14 form.

15 THE WITNESS: I can't
16 remember specifically what he testified
17 to. I just -- I don't know.

18 BY MR. CARTER:

19 Q. And do the annual reports say
20 anything about the existence of this particular
21 audit?

22 A. In 2003, no.

23 Q. Okay. And it doesn't concern you
24 that the audit may not exist?

1 A. Well --

2 MR. MAHAFFEY: Objection as to
3 form.

4 THE WITNESS: -- the audits
5 that are referenced and are addressed in
6 the four annual reports are during the
7 relevant period of time for this lawsuit
8 '98 to 2001. This is outside the scope
9 of that period.

10 BY MR. CARTER:

11 Q. And you don't know what those audits
12 covered, do you?

13 A. Not with any degree of
14 particularity, no.

15 Q. And as we said, there's all kinds of
16 different audits?

17 A. Potentially, yes.

18 Q. In fact, there are audits simply to
19 reconcile debits and credits in an account, aren't
20 there?

21 A. That is true.

22 Q. And those types of audits don't do
23 anything to assess anti-money laundering or
24 counter-terror financing deviations, do they?

1 A. Well, let me answer it this way.

2 With regard to the annual reports,
3 my recollection in reading the cover pages is that
4 it addresses in general rules and regulations of
5 SAMA and find that the bank is in compliance with
6 those rules and regulations. It does not say it
7 was looking at debits and credits only.

8 Q. Okay. You don't know whether or not
9 there were any anti-money laundering audits
10 conducted of Al Rajhi Bank, do you?

11 A. That were focused just on that area?
12 No, I don't know.

13 Q. Okay. And with regard to your
14 invocation of the reported statements by
15 Mr. Al-Gaith, the Saudi official at this meeting
16 with Mr. Zarate, did you note the comment in the
17 diplomatic cable that:

18 "Al-Gaith did not appear to support
19 a close relationship with the United States
20 government throughout the meeting. At the
21 beginning of the conversation, Al-Gaith said that
22 he was 'fed up' with the U.S. government's
23 allegations"?

24 MR. MAHAFFEY: Objection as to

1 form.

2 THE WITNESS: I can't
3 remember the particular statement. I
4 would have to look at it.

5 BY MR. CARTER:

6 Q. Well, in deciding to cite
7 Mr. Gaith's statement to Mr. Zarate reported in
8 this cable, did it give you any pause that the
9 U.S. government assessed that Mr. Gaith did not
10 appear to support a close relationship with the
11 United States government?

12 MR. MAHAFFEY: Objection as to
13 form. Misstates the report.

14 THE WITNESS: To the extent
15 that Mr. Gaith said that that is a very
16 general statement and doesn't impact, in
17 my view, on the particularity of what he
18 says with regard to the Ernst & Young
19 audit in 2003.

20 BY MR. CARTER:

21 Q. Do you know whether the Ernst &
22 Young audit was ever provided to the United States
23 government?

24 MR. MAHAFFEY: Objection.

1 THE WITNESS: I do not know
2 that.

3 MR. CARTER: Okay. If we can
4 mark as the next exhibit the diplomatic
5 cable dated November 25, 2004, which is
6 at Tab 21.

7 (Document marked for
8 identification as Pasley Exhibit 6.)

9 MR. CARTER: You know what?
10 Let's take this down. We can take that
11 break. Sorry.

12 MR. MAHAFFEY: Thanks.

13 THE VIDEOGRAPHER: The time is
14 10:30 a.m. We're off the record.

15 (Recess.)

16 THE VIDEOGRAPHER: The time is
17 10:45 a.m. We are back on the record.

18 BY MR. CARTER:

19 Q. Mr. Pasley, before we took a break,
20 we were discussing a few diplomatic cables that
21 are referenced in the expert reports in the case.

22 Before turning to the second of
23 those, do you know what customer relationships
24 were within the scope of discovery in this case?

1 MR. MAHAFFEY: Objection as to
2 form.

3 THE WITNESS: No, I do not
4 know about the scope of discovery.

5 BY MR. CARTER:

6 Q. Okay.

7 A. If I could go back? If you'd permit
8 me to amplify my answer with regard to the audits.

9 I was looking at my report, and
10 Footnote 20 cites to Jonathan Winer's report 1.4.2
11 which talks about the audits and Mr. Galloway
12 saying that they were audits pertaining to the
13 implementation of AML policies and procedures
14 systematically and at branch levels.

15 So I just wanted to clarify that,
16 that the audits, according to Mr. Galloway's sworn
17 testimony, did address AML issues.

18 Q. You testified earlier that, to the
19 extent there were audits addressing AML issues,
20 those would have been relevant to the work that
21 you were doing here, didn't you?

22 MR. MAHAFFEY: Objection as to
23 form.

24 THE WITNESS: Well, I believe

1 my answer with that regard still stands.

2 I had the references, the
3 explanations in Mr. Winer's report that I
4 was reviewing, and the annual reports,
5 which indicate that with regard to these
6 audits that covered AML and BSA that
7 there were no problems found.

8 BY MR. CARTER:

9 Q. Well, where -- where -- where do you
10 have information saying that there were audits
11 covering AML and BSA that showed no problems
12 found?

13 A. It's a combination of different
14 things. One, Mr. Winer's report that I just
15 referenced and --

16 Q. Mr. Winer's report doesn't say that.

17 A. -- and the annual reports which
18 contain the cover page of those audits.

19 Q. You don't know what the audits were
20 about, do you?

21 MR. MAHAFFEY: Objection as to
22 form.

23 THE WITNESS: Well, as I
24 attempted to just say, according to

1 Mr. Winer's report, they addressed AML
2 and BSA.

3 BY MR. CARTER:

4 Q. So as an AML and BSA expert, you
5 find it sufficient to rely entirely on
6 representations of a witness concerning the
7 existence of audits that you haven't seen?

8 MR. MAHAFFEY: Objection as to
9 form.

10 THE WITNESS: I'm relying on
11 that, plus the audit plans, plus the
12 annual reports, plus the fact that
13 Mr. Winer does not dispute that there --
14 there were no findings of wrongdoings.

15 BY MR. CARTER:

16 Q. That's -- that's a misrepresentation
17 of Mr. Winer's report.

18 MR. MAHAFFEY: Objection as to
19 form.

20 BY MR. CARTER:

21 Q. Where does Mr. Winer say that?

22 A. Again, his report speaks for itself.
23 I was referencing --

24 Q. No. You just -- you just

1 represented what his report said.

2 Where does he say that the audits
3 reflected no wrongdoing?

4 MR. MAHAFFEY: Objection as to
5 form.

6 THE WITNESS: I believe he
7 cites to the State Department cable. I
8 couldn't -- can't find it right off the
9 hand -- my hand.

10 BY MR. CARTER:

11 Q. He doesn't credit the statement in
12 the State Department cable, does it?

13 MR. MAHAFFEY: Objection as to
14 form.

15 THE WITNESS: I don't believe
16 he disputes it either.

17 BY MR. CARTER:

18 Q. Mr. Pasley, you acknowledge that you
19 haven't seen a single audit relating to Al Rajhi
20 Bank, have you?

21 A. Not --

22 MR. MAHAFFEY: Objection.

23 THE WITNESS: Not the full
24 audit, no, that is correct.

1 BY MR. CARTER:

2 Q. And there -- you acknowledge that
3 there are all kinds of different types of audits,
4 right?

5 MR. MAHAFFEY: Objection as to
6 form. Asked and answered.

7 THE WITNESS: Correct. But as
8 I indicated in Mr. Winer's report, he
9 references the audit as covering AML and
10 BSA.

11 BY MR. CARTER:

12 Q. Well, Mr. Winer doesn't represent
13 that. He acknowledges testimony of Mr. Galloway,
14 doesn't he?

15 A. Correct, but he doesn't refute
16 Mr. Galloway's statement in his sworn testimony.

17 Q. Okay. We'll get to that in a
18 second.

19 Have you seen any AML- or
20 BSA-related audits for Al Rajhi Bank?

21 A. Not the underlying audits, no.

22 Q. And the purpose of audits is to
23 identify compliance deficiencies, problems, or
24 even criminal wrongdoing, aren't they?

1 MR. MAHAFFEY: Objection as to
2 form.

3 THE WITNESS: Not necessarily
4 -- not necessarily criminal wrongdoing
5 but, yes, you're right.

6 BY MR. CARTER:

7 Q. Okay.

8 A. You're correct in general.

9 Q. And audits also often include
10 statements from the auditors about any material
11 limitations that were placed on their work, don't
12 they?

13 A. Generally, yes.

14 Q. Okay. And did Mr. Galloway indicate
15 that he had seen any of the audits?

16 MR. MAHAFFEY: Objection as to
17 form.

18 THE WITNESS: I believe he
19 testified that the audits did occur,
20 internal and external audits, and that
21 there were SAMA reviews of the bank.

22 BY MR. CARTER:

23 Q. Did Mr. Galloway see any of the
24 audits?

1 A. I don't know what he had available
2 to him. I would have to assume that -- well, I
3 don't know. I don't know what he had available to
4 him.

5 Q. Do you agree that reviewing the
6 audits would be helpful in ascertaining whether or
7 not Al Rajhi Bank complied with its AML
8 obligations before 9/11?

9 MR. MAHAFFEY: Objection as to
10 form.

11 THE WITNESS: Again, I think
12 I've answered that question a couple of
13 times.

14 I don't think it was essential
15 for my review as a rebuttal witness
16 reviewing what Mr. Galloway testified to
17 and what Mr. Winer said in his report.

18 BY MR. CARTER:

19 Q. Okay. You invoke the existence of
20 the audits as a basis for your criticisms of
21 Mr. Winer's opinions about deficiencies in the
22 bank's practices, don't you?

23 A. I don't really understand your
24 question.

1 I don't think so. I don't think I
2 do.

3 Q. In criticizing Mr. Winer's reports,
4 you invoke the audits, don't you?

5 MR. MAHAFFEY: Objection as to
6 form.

7 THE WITNESS: The audits are
8 referenced in the record, and I refer to
9 them a couple of times saying that the
10 audits did occur based on the annual
11 reports, Mr. Galloway's testimony, the
12 detailed audit plan. All of which
13 reference AML and BSA. And SAMA's
14 explanation to Juan Zarate that there
15 were no problems found.

16 BY MR. CARTER:

17 Q. Okay. That wasn't an answer to my
18 question.

19 My question is: Does your expert
20 report cite the alleged audits as a basis for your
21 criticisms of Mr. Winer's conclusions?

22 MR. MAHAFFEY: Objection as to
23 form.

24 THE WITNESS: I think the

1 report speaks for itself. I'm not sure I
2 understand your question. I apologize.

3 BY MR. CARTER:

4 Q. You --

5 A. I just don't understand it.

6 Q. You haven't seen the audits, just to
7 be clear, right?

8 MR. MAHAFFEY: Objection as to
9 form. Asked and answered.

10 THE WITNESS: Again, we've
11 gone over this material, with all due
12 respect.

13 I have not seen the underlying
14 audits, no.

15 BY MR. CARTER:

16 Q. So you don't know what they say?

17 A. I do not have access to the
18 underlying audits.

19 Q. And the claims in this case concern
20 Al Rajhi Bank's relationships with specific
21 customers and the handling of those specific
22 accounts.

23 Are you aware of that?

24 MR. MAHAFFEY: Objection as to

1 form.

2 THE WITNESS: Yes, I am.

3 BY MR. CARTER:

4 Q. Okay. Do you know whether any audit
5 during this period touched upon or referred to any
6 of the involved customers or their accounts?

7 MR. MAHAFFEY: Objection as to
8 form.

9 THE WITNESS: With
10 specificity, no, I do not.

11 BY MR. CARTER:

12 Q. Okay. Are you aware that plaintiffs
13 asked for any audits that referenced any of these
14 customers and were told that none exist?

15 MR. MAHAFFEY: Objection as to
16 form.

17 THE WITNESS: Again, the
18 maintenance of the bank's records,
19 discussions between counsel, none of that
20 is within my purview.

21 BY MR. CARTER:

22 Q. Going back to where we left off, we
23 had marked the November 2004 diplomatic cable as
24 the next exhibit.

1 A. Yes.

2 Q. Did you review this diplomatic cable
3 as part of your work?

4 A. I believe I did.

5 I can't really read it here on the
6 screen.

7 Q. We can make it bigger.

8 It concerns a proposed joint
9 examination the United States government was
10 asking for of Al Rajhi Bank.

11 Do you recall that?

12 A. Yes, I do.

13 Q. And do you know whether or not that
14 joint examination ever occurred?

15 A. I'm not positive, but I believe I
16 understand that it never did occur.

17 Q. Okay. Do you know why it didn't
18 occur?

19 A. No, I have no idea.

20 MR. MAHAFFEY: Objection as to
21 form.

22 BY MR. CARTER:

23 Q. And what is the basis for your
24 understanding that it did not occur?

1 A. I think there's a reference to that
2 effect in the documentation or in Mr. Winer's
3 report. I'm not positive as to where I came upon
4 that information.

5 Q. The proposed joint examination was
6 prompted by concerns related to terrorist
7 financing issues, correct?

8 MR. MAHAFFEY: Objection as to
9 form.

10 THE WITNESS: I am not sure.

11 I think that may be reflected in this
12 State Department diplomatic memo.

13 BY MR. CARTER:

14 Q. The U.S. was proposing that it be
15 conducted pursuant to something called the Joint
16 Terrorist Financing Task Force; is that correct?

17 A. Yes, I see that.

18 Q. Do you know what the Joint Terrorist
19 Financing Task Force was?

20 A. No. I'm not familiar with it.

21 Q. And if we can scroll down a bit, it
22 indicates that:

23 "The U.S. government has provided
24 the Saudi government with information documenting

1 specific instances of terrorists using Al Rajhi
2 Bank."

3 Do you see that section?

4 A. Yes, I do see that.

5 Q. And do you understand that the
6 proposal from the U.S. was prompted, in part, by
7 that use of the bank?

8 A. What is the date of this memo again?

9 Q. It's 2004.

10 A. Okay. So this is 2004. So this
11 would be after 9/11.

12 Q. My question stands.

13 A. Could you repeat your question? I'm
14 sorry.

15 Q. Okay. Do you understand that the
16 joint examination being proposed by the United
17 States was prompted, at least in part, by the
18 information documenting specific instances of
19 terrorists using Al Rajhi Bank?

20 MR. MAHAFFEY: Objection as to
21 form.

22 THE WITNESS: I believe
23 that's what it says here, yes.

24 BY MR. CARTER:

1 Q. And do you recall whether or not the
2 diplomatic cable reflects that the U.S. government
3 made a specific proposal to the Saudis concerning
4 the protocol for the joint examination?

5 MR. MAHAFFEY: Objection as to
6 form.

7 THE WITNESS: No, I don't
8 know.

9 BY MR. CARTER:

10 Q. If we scroll down to the next page
11 -- well, beginning of the bottom of that page, it
12 describes what the joint examination will include.

13 "The joint examination will include
14 a review of both customer information relevant to
15 the specified accounts and transactions (wire
16 transfer, check payment, cash management)
17 processed through those accounts. Additionally,
18 the examination team will review anti-money
19 laundering compliance files related to all of the
20 accounts."

21 Do you see that?

22 A. Yes, I see that.

23 Q. Okay. And reviewing further down
24 near the bottom, under Section 1B through 1C, it

1 talks about the specific information that would be
2 provided for the accounts subject to the joint
3 review.

4 Do you see that section?

5 A. The document speaks for itself. I
6 really can't -- cannot interpret the document with
7 any other -- with any further degree of
8 specificity.

9 Q. I'm just asking whether or not you
10 follow where I am in the document.

11 A. I follow where you are, yes.

12 Q. And then if we go down to the next
13 page, the last item that the U.S. government
14 proposed including in the joint examination was:

15 "Any internal audit reports,
16 including any work papers and supporting
17 documentation, rendered during the preceding three
18 years, including audits of Compliance and
19 AML/KYC."

20 Do you see that?

21 A. Yes, I see that.

22 Q. Do you agree with me that for
23 purposes of the review that the United States was
24 proposing to the Saudi government, the United

1 States had proposed that the review should
2 encompass external audit reports?

3 A. To the extent that this was the
4 U.S.'s proposal, yes, I agree.

5 Q. Okay. So the experts of the United
6 States government conducting this proposed terror
7 financing review thought it was relevant to
8 actually review the audit reports and not just
9 take the representation from Al-Gaith a year
10 earlier -- or three months earlier that there had
11 been an audit showing no wrongdoing?

12 MR. MAHAFFEY: Objection as to
13 form.

14 THE WITNESS: I really don't
15 know what was in the heads of the U.S.
16 government in making this request. It
17 really speaks for itself.

18 And my understanding is that
19 not only does it postdate 9/11, it was a
20 joint examination that never occurred.

21 BY MR. CARTER:

22 Q. Mr. Pasley, your report includes a
23 discussion of certain sets of transactions that
24 Mr. Winer identified as suspicious.

1 Do you recall that discussion?

2 A. In general, yes. You'd have to
3 direct me to specific parts of my report.

4 Q. Well, I'm just asking whether or not
5 you remember addressing that subject matter in
6 your report.

7 A. I believe I did. Again, you'd have
8 to direct me to the particular page and sentence.

9 Q. On page 10 of the report.

10 A. Yes.

11 Q. There is a heading "Transactions
12 characterized by Plaintiffs' experts as suspicious
13 do not suggest the Bank was materially
14 noncompliant with SAMA's rules and regulations."

15 Do you see that?

16 A. Yes, I do.

17 Q. And do you recall addressing those
18 issues?

19 A. Yes, I do recall.

20 Q. And do you recall the account
21 holders that were involved with regard to the
22 alleged suspicious transactions?

23 A. Again, in general, there were four
24 or five NGOs that Mr. Winer addresses in his

1 report that I was addressing.

2 Q. Okay. Do you recall whether or not
3 you addressed any individual accounts?

4 A. Well, there was the account of
5 Al-Buthe, who is an individual. So, yes.

6 Q. Any others that you recall?

7 A. Well, in the first paragraph, Aqil
8 Al-Aqil.

9 Q. Okay. Is the term "suspicious
10 transaction" familiar to you?

11 A. Yes, it is.

12 Q. Is it a term of art in the
13 anti-money laundering field?

14 A. Well, yes, it is. Banks are
15 required in the United States to file reports with
16 regard to suspicious activity.

17 Q. Okay. And are there criteria used
18 to determine whether a particular transaction is
19 suspicious?

20 A. No. The term is "suspicious" or
21 "unusual." So it's in the eyes of the beholder.
22 There's no specific direction as to what is
23 suspicious, what isn't. It would depend on the
24 circumstances, the analysis of the bank, their

1 conclusion as to whether it's unusual or
2 suspicious with regard to a particular client or
3 particular account.

4 Q. And there are no descriptions of
5 types of transactions that on their face are red
6 flags for a suspicious activity?

7 MR. MAHAFFEY: Objection as to
8 form.

9 THE WITNESS: In various
10 guidelines and issuances, there are lists
11 of potential red flags that a bank should
12 be mindful of.

13 So to the extent that that
14 answers your question, yes.

15 BY MR. CARTER:

16 Q. And were there any red flags of that
17 nature in existence in the 1998 to 2001 time
18 period?

19 MR. MAHAFFEY: Objection as to
20 form.

21 THE WITNESS: With regard to?
22 To what?

23 BY MR. CARTER:

24 Q. Suspicious transactions.

1 A. With regard to Al Rajhi Bank?

2 Q. No, no, no.

3 I'm asking whether or not there were
4 any factors or types of transactions that were
5 designated as red flags for potential suspicious
6 activity reporting.

7 MR. MAHAFFEY: Objection as to
8 form.

9 THE WITNESS: Again, there
10 are lists of red flags that are available
11 to banks, but there are hundreds of
12 thousands of suspicious activity reports
13 that are filed every year by banks. So
14 they -- they run the gambit.

15 BY MR. CARTER:

16 Q. Were there lists of red flags
17 available to banks in the years before
18 September 11th attacks?

19 A. Yes, there were.

20 Q. And do you recall any of the types
21 of transactions or behavior described in the lists
22 that were available during that time?

23 MR. MAHAFFEY: Objection as to
24 form.

1 THE WITNESS: Well, the list
2 goes on for pages and pages.

3 BY MR. CARTER:

4 Q. You say on page 10 that the
5 transactions involving Aqil Al-Aqil discussed in
6 Winer's report do not seem suspicious to you.

7 Do you see that?

8 A. Yes, I do.

9 Q. Okay. What were the transactions at
10 issue in Aqil's report --

11 MR. MAHAFFEY: Objection as to
12 form.

13 BY MR. CARTER:

14 Q. -- or in Aqil's account?

15 A. Well, it indicates that there were
16 some large deposits and withdrawals over a
17 five-year period, but nothing to indicate that
18 these intermittent transactions were, in fact,
19 problematic or used for wrongdoing.

20 Q. Okay. Well, do you recall how much
21 money was deposited into and out of Aqil Al-Aqil's
22 personal account?

23 MR. MAHAFFEY: Objection as to
24 form.

1 THE WITNESS: I do not have
2 that in front of me, and I don't recall,
3 no. I'm sorry.

4 BY MR. CARTER:

5 Q. And with regard to Mr. Al-Buthe, do
6 you recall any of the details of the transactions
7 carried out via his accounts that you address in
8 your expert report?

9 MR. MAHAFFEY: Objection as to
10 form.

THE WITNESS: Well, it
indicates in my report that Mr. Winer
discussed cash deposits into Al-Buthe's
account and use of travelers checks, but,
in my view, does not provide information
to indicate wrongdoing by the bank, only
detailing routine banking services.

18 BY MR. CARTER:

19 Q. And do you recall the size of any of
20 the cash deposits involved with the Al-Buthe
21 account?

22 MR. MAHAFFEY: Objection as to
23 form

THE WITNESS: No, I don't know.

1 the amounts.

2 BY MR. CARTER:

3 Q. And do you --

4 A. I don't have it in front of me.

5 Q. And do you recall approximately the
6 value of the travelers checks that were involved?

7 MR. MAHAFFEY: Objection as to
8 form.

9 THE WITNESS: I believe it
10 was a large volume, but I do not know
11 specifically what -- what they were.

12 BY MR. CARTER:

13 Q. Your report doesn't specifically
14 address the value of any individual transactions
15 carried out by Aqil, does it?

16 A. No, I don't think it does.

17 Q. And it doesn't discuss the value of
18 any individual transaction carried out by
19 Mr. Al-Buthe, does it?

20 A. Not with any degree of specificity,
21 no, I don't think so.

22 Q. Okay. Your report references the
23 fact that Aqil was not designated as a terrorist
24 until 2004.

1 Do you see that?

2 A. I believe that's correct. I don't
3 have it in front of me.

4 Yes, I see that. Yes, in the first
5 paragraph.

6 Q. Okay. And it says that Al-Buthe was
7 not indicted until 2010.

8 Do you see that?

9 A. Yes, I see that.

10 Q. And you cite the fact that Aqil was
11 not designated until 2004 as a data point in
12 support of your opinion, right?

13 A. I believe that's correct, yes.

14 Q. And you cite --

15 A. Again, with regard to rebutting what
16 Mr. Winer has concluded.

17 Q. And you cite the fact that

18 Mr. Al-Buthe was not indicted until 2010 in
19 support of your rebuttal of Mr. Winer's opinion
20 that the Al-Buthe transactions were suspicious,
21 correct?

22 A. Well, let me answer it in the
23 negative and quote from my report, that Mr. Winer
24 presents no evidence as to why the bank should

1 have suspected Al-Buthe before 9/11.

2 Q. Okay. Are suspicious transaction
3 protocols limited to people who have been publicly
4 implicated in criminal wrongdoing?

5 A. No, they are not.

6 Q. And, in fact, people who have never
7 been implicated can carry out transactions that
8 carry -- that qualify as suspicious, can't they?

9 A. Yes, and we don't know whether Al
10 Rajhi Bank reported these suspicious or unusual
11 transactions, to the extent that's what they
12 concluded, or whether they did not report them to
13 SAMA. We just don't know. Those -- in the United
14 States, those type of reports are confidential and
15 can't be disclosed.

16 Q. Okay. Do you know whether under
17 SAMA's guidelines the bank would be required to
18 stop activity in the account upon issuing a
19 suspicious activity report?

20 MR. MAHAFFEY: Objection as to
21 form.

22 THE WITNESS: No, I don't
23 know. I do know in United States it's
24 not a requirement for a bank to close an

1 account. That is the basis for a filing
2 of a SAR.

3 BY MR. CARTER:

4 Q. I didn't ask if it was a SAMA
5 requirement to close the account.

6 I asked whether or not you know if
7 SAMA's guidelines dictated that activity in the
8 account needed to be stopped once a suspicious
9 activity report was filed.

10 A. No --

11 MR. MAHAFFEY: Objection.

12 THE WITNESS: -- I do not
13 know.

14 BY MR. CARTER:

15 Q. Okay. Do you agree that the
16 protocols governing assessment of whether or not a
17 transaction is suspicious do not focus solely on
18 the identity of the client?

19 MR. MAHAFFEY: Objection as to
20 form.

21 THE WITNESS: Well, I think
22 it's part and parcel of the identity of
23 the client, the nature of his or her or
24 its transactions, its accounts, its

1 business, its normal practices, the level
2 and degree of its transactions over the
3 years. All that is part and parcel of
4 the bank's review and analysis of a
5 transaction or an account.

6 BY MR. CARTER:

7 Q. So the nature of the customer's
8 business or employment would matter?

9 A. Yes, it would.

10 Q. Okay. The historical level of
11 activity in the account might matter?

12 A. Yes. I will give you an example.
13 If I engaged in a lot of cash transactions, that
14 would be one thing. If there were an account held
15 by Starbucks that dealt with a lot of cash, that
16 would be another thing.

17 Q. Okay. And speaking of that, are
18 large cash transactions a potential red flag?

19 A. Potentially, yes.

20 Q. Okay. And are a large number of
21 deposits without any withdrawals a possible red
22 flag?

23 A. Typically the red flag is a large
24 volume of cash deposits followed quickly by large

1 withdrawals, but, again, it's a potential red flag
2 for the bank to potentially review and analyze,
3 and it would depend. The level of investigation
4 or review would depend on the nature of the
5 account and the history of the bank, the bank has
6 with that account.

7 Q. Okay.

8 A. I would also note that there is a
9 guideline, too, by SAMA indicating that banks do
10 not necessarily have to review and analyze and
11 investigate all transactions.

12 Q. Okay. Well, we've -- you've
13 identified a few things that would potentially
14 indicate red flags. Let's continue on that
15 subject.

16 Are transactions for unknown
17 objectives which do not adhere to the customer's
18 job or activity pose a potential red flag?

19 A. It's possible to the extent that the
20 bank is aware of the activity, goals, and -- and
21 nature of the account.

22 Q. What about transactions through an
23 account that are being conducted for some other
24 person?

1 A. That's possibly something that the
2 bank would look like at, to the extent it's aware
3 of such transactions that are not for the account
4 holder.

5 Q. With regard to your analysis of the
6 Aqil transactions, does your report include an
7 assessment of any of the potential red flags we
8 just discussed?

9 A. Not the specific transactions in
10 Aqil's account, no. I was discussing them in
11 general --

12 Q. Okay.

13 A. -- in an effort to rebut Mr. Winer's
14 report.

15 Q. And in connection with your rebuttal
16 of Mr. Winer's report concerning the Aqil
17 accounts, did you assess the historical use of
18 that account reflected in the records produced in
19 discovery?

20 A. I primarily relied on my review and
21 analysis of Mr. Winer's report and description of
22 the Al-Aqil account and transactions.

23 Q. Did you review the Aqil account
24 transactions?

1 A. Not specifically, no. They were
2 made available to me in general. I did page
3 through them.

4 Q. Okay. But you did not analyze the
5 Aqil transactions?

6 A. I did not do a forensic accounting
7 review, no.

8 Q. What about the Al-Buthe
9 transactions? Did you review the actual
10 transaction information or just base your opinion
11 on the reading of what was in Mr. Winer's report?

12 A. I believe both. I reviewed the
13 Al-Buthe's transactions in general as an overview,
14 but primarily addressed Mr. Winer's description of
15 the transactions and his conclusions.

16 MR. CARTER: Let's mark the
17 Aqil transactions, which were previously
18 marked as an exhibit at Abdullah Al
19 Rajhi's deposition. It's Exhibit 49 and
20 it's at Tab 14.

21 (Document marked for
22 identification as Pasley Exhibit 7.)

23 BY MR. CARTER:

24 Q. Mr. Pasley, this is transaction

1 information from one of Mr. Aqil's accounts. As I
2 recall, he had two.

3 Does that comport with your
4 recollection?

5 A. I can't remember it specifically.

6 Q. Okay. Looking at the one in front
7 of you which covers period from January 1, 1998 to
8 December 31, 2002 and -- well, I'm not going to
9 read the entire account number, but the opening
10 balance on this is 15,117 riyals, approximately.

11 Are we on the same document?

12 A. Yes, I see that. Yes.

13 Q. Okay. Do you recall reviewing this
14 set of transaction information?

15 A. Just in general.

16 Q. When you say "just in general," what
17 do you mean?

18 A. I did not do any kind of forensic
19 review of the transactions.

20 Q. Did you review the transactions
21 reflected in this document based on your
22 understanding of the red flag factors?

23 A. I can't say that I did. In order to
24 do a proper review of the transactions, you would

1 have to know the background of the account, the
2 account holder, and the nature of the transactions
3 and do an analysis and probably contact the
4 customer. None of which I did.

5 Q. Okay. So you didn't do a formal red
6 flag analysis of these transactions?

7 A. Correct. I did not.

8 Q. Okay. Did you review the Know Your
9 Customer file for Mr. Aqil?

10 A. No, I did not. It was not available
11 to me.

12 Q. Just a few things with regard to
13 this.

14 The scope of the transactions that
15 we have available begins with a balance on January
16 10, 1998.

17 Do you see that? It's the second
18 column in.

19 A. Well, there's an opening balance
20 indicated --

21 Q. Yeah.

22 A. -- and there's date at the top. So
23 I have to assume that those correlate one to the
24 other, but I don't know.

1 Q. Well, I understand the box that's
2 highlighted in the version in front of you to
3 reflect the date of the transaction and that the
4 98 refers to the year, the 01 refers to the month,
5 and the 10 --

6 A. I see that now.

7 Q. -- refers to the day.

8 A. Yes.

9 Q. Do you know whether or not that's
10 correct?

11 A. Well, I have no way of knowing if
12 it's correct, but I understand what you're saying.

13 Q. Well, for purposes of understanding
14 whether or not transactions are suspicious, would
15 the dates on which they occur potentially be
16 relevant?

17 A. Yes, it would be potentially
18 relevant. Yes.

19 Q. Okay. And you're not sure looking
20 at this document what the dates are?

21 A. Well, I'll take it on faith as you
22 represent that the date in this box is January 10,
23 1998.

24 Q. Okay. But that's not available --

1 that's not information that you were aware of
2 before I made the representation to you?

3 MR. MAHAFFEY: Objection as to
4 form.

5 THE WITNESS: I did not focus
6 on the dates, no.

7 BY MR. CARTER:

8 Q. Okay. Looking at this, you'll see
9 that the period from January through 1998 through
10 March of 1999 which is -- covers the first entry
11 on the second page?

12 A. Yes.

13 Q. There's a relatively modest level of
14 activity in the account, correct?

15 A. There seems to be a transaction once
16 a month or so, yes.

17 Q. And during that period, if I'm
18 understanding the document correctly, there was an
19 opening balance of a little more than 15,000
20 riyals and it appears never to go above 29,000 --
21 29,458 riyals during this period?

22 A. I see that, yes.

23 Q. And as of the March '99 -- March 15,
24 '99, the balance is a negative 1200 or so riyals.

1 correct?

2 A. Yes, I see that.

3 Q. Okay. So during the year from the
4 beginning of 1998 through March of 1999, would you
5 agree with me that the total value of funds in the
6 account spanned about negative 1200 riyals and up
7 to an apex of about 29,458 riyals?

8 A. That appears to be what the document
9 says, yes.

10 Q. Okay. And now let's look at the
11 period beginning on May 5, 1999, which is the next
12 entry below the March entry.

13 A. Yes, I see that.

14 Q. Okay. Now, on March --

15 On May 5th, there is a cash deposit
16 into the account of over 440,000 riyals.

17 Do you see that?

18 A. Yes, I see that.

19 Q. Okay. Does that cash -- cash
20 deposit seem to be out of line with the historical
21 usage of the account?

22 A. It is large compared to the previous
23 year, yes.

24 Q. And that would be a factor in

1 assessing of whether there's a red flag?

2 A. Potentially, and I don't know
3 whether or not the bank actually reviewed the
4 transaction.

5 Q. Okay. But you do know --

6 A. And whether --

7 MR. MAHAFFEY: Objection.

8 BY MR. CARTER:

9 Q. -- whether or not Mr. Winer
10 suggested that this trans -- this -- this -- these
11 deposits were suspicious, and that's what we're
12 talking about, not whether the bank flagged them.

13 A. Well, I don't think you can separate
14 one from the other.

15 Q. Well --

16 A. I don't know whether the bank
17 analyzed these transactions and/or made a report
18 to SAMA with regard to them.

19 Q. Based on the historical usage during
20 the 14 months or, actually, 16 months preceding
21 the May 5, '99, does the 440,000-plus riyal cash
22 deposit into Mr. Aqil's account strike you as
23 suspicious?

24 A. It's larger than the previous year.

1 I would agree with you. I don't know whether it's
2 per se suspicious. I don't know anything about
3 the account or the purpose of the transaction, or
4 whether the bank inquired as to the nature and
5 purpose of the -- of the transaction.

6 Q. And then the very next day, Mr. Agil
7 deposits over 676,000 riyals.

8 A. Do you agree?

9 Q. Yes, I see that.

10 Q. Okay. And that's, again, a cash
11 deposit?

12 A. Correct.

13 Q. And then two days later 1.259
14 million riyals, correct?

15 A. Correct.

16 Q. And then the day after that 684,000
17 riyals, correct?

18 A. Yes. Correct.

19 Q. And then the day after that 690,000
20 riyals again in cash, correct?

21 A. Yes. Correct.

22 Q. And you'd agree this pattern of cash
23 deposits goes on almost daily for most of the
24 month of May 1999 and into July of 1999, doesn't

1 it?

2 A. I'm trying to look at it, but I'll
3 take your word for it.

4 Q. Okay. And during that period from
5 May of 1999 until July 14th of 1999, the account
6 balance goes from negative 1207 riyals to
7 19,777,000 riyals, correct?

8 A. I'll take your word for it. I'm
9 having trouble finding July.

10 Q. It is on the page that's
11 Bates-stamped ARB 41460.

12 A. Okay.

13 Q. And the last cash deposit during the
14 period I'm discussing is in the amount of 23,631
15 riyals.

16 A. Yes, I see that.

17 Q. Okay. And do you agree then that
18 the period I just described from the beginning of
19 these deposits in May of '99 until this July 14,
20 '99 date, the value of the funds in this personal
21 account of Mr. Aqil goes from about negative 1200
22 riyals to almost 20 million riyals?

23 A. I see that, yes.

24 Q. Okay. And during that same time

1 period, there are no withdrawals from the account,
2 correct?

3 A. There does not appear to be.

4 Q. And if you look -- well, do you
5 understand this to be Mr. Aqil's personal account?

6 A. It's in his name. I don't know
7 whether it's a personal account or a business
8 account, or an account that he held on behalf of
9 Al-Haramain.

10 Q. Shouldn't an account for Al-Haramain
11 be in the name of Al-Haramain?

12 MR. MAHAFFEY: Objection as to
13 form.

14 THE WITNESS: I don't know
15 the practices of account holders in Saudi
16 Arabia or Al-Haramain, but generally I
17 would agree with you.

18 BY MR. CARTER:

19 Q. Okay. Do you happen to know whether
20 SAMA's guidelines require that accounts not be
21 held in fictitious names?

22 MR. MAHAFFEY: Objection as to
23 form.

24 THE WITNESS: I don't think

1 Mr. Al-Aqil is a fictitious person.

2 But in response to your
3 question, I'm not a SAMA regulatory
4 expert. So I don't know what its
5 guidelines and regulations are.

6 BY MR. CARTER:

7 Q. Okay. Now, most of these
8 transactions are in cash, correct?

9 A. Yes, and in further response to your
10 question, Al-Haramain is listed in these cash
11 transactions.

12 Q. Okay. And I was going to ask you
13 about that.

14 So there are entries reflecting, for
15 example, on 41459 a deposit in the account
16 associated with Al-Haramain Islamic Foundation.

17 Do you see that?

18 A. Beginning on 1459, yes.

19 Q. There's one there and --

20 A. And going to 1460.

21 Q. And as a -- as an anti-money
22 laundering expert, does that raise concerns with
23 you that Mr. Aqil's account in his personal name
24 was being used to conduct Al-Haramain business?

1 A. I'm really not sure how to interpret
2 the account transactions and what Mr. Al-Aqil was
3 doing.

4 I do understand that later in --
5 later in time Mr. Aqil asked for the account to be
6 transferred completely to Al-Haramain.

7 Q. And do you happen to know whether or
8 not Al-Haramain had been publicly implicated in
9 terrorist activity prior to this 1999 period?

10 MR. MAHAFFEY: Objection as to
11 form.

12 THE WITNESS: No, I don't
13 know. I don't know when it was
14 designated or parts of it were
15 designated. My understanding it was
16 after 9/11.

17 BY MR. CARTER:

18 Q. Well, I'm raising a question
19 separate from designation.

20 A. Okay.

21 Q. Do you happen to know whether there
22 was any action to close any Al-Haramain offices
23 based on suspected involvement in terrorism prior
24 to this 1999 period?

1 MR. MAHAFFEY: Objection as to
2 form.

3 THE WITNESS: I'm not aware
4 of that.

5 BY MR. CARTER:

6 Q. Now, once we get to July of --
7 July 27, 1999, there is a significant reversal of
8 the flow of the funds into this account.

9 Do you see that in the ensuing --

10 A. Well, there was a withdrawal of
11 2.7 million riyals, yes.

12 Q. Yeah. And then on the next page
13 41461, there's actually a withdrawal of 16,900,000
14 riyals.

15 Do you see that?

16 A. Yes, I see that on --

17 Q. Does the --

18 A. -- August 20th.

19 Q. Does this sudden reversal in the
20 flow of funds into and out of the account concern
21 you from a suspicious transaction perspective?

22 A. Again, I don't know whether it's
23 suspicious or not. I did not analyze the
24 underlying transactions or account, nor speak to

1 anybody at Al-Haramain or at the bank with regard
2 to the account.

3 Q. Okay. You agree that the withdrawal
4 in a single check transaction of nearly 17 million
5 riyals is a large transaction?

6 A. It appears to be a large
7 transaction, yes.

8 Q. Okay. What -- if you were to
9 conduct a full suspicious transaction review of
10 this set of transactions that we just discussed,
11 what -- what factors would you consider?

12 A. The nature of the account, the
13 purpose of the account, Mr. Aqil's explanation of
14 the transactions, that type of information.

15 Q. Would you -- would a transaction or
16 series of transactions such as those reflected in
17 May of 1999 involving cash deposits, ranging from
18 400,000 riyals to 1.259 million riyals warrant an
19 inquiry to determine the purpose?

20 A. It would be potentially something
21 the bank should do, yes.

22 Q. Okay.

23 A. But I don't know what information
24 was available to the bank, what underlying

1 information the bank had with regard to the
2 account or the account holder, the purpose of the
3 account, why it was receiving cash transactions.
4 I do understand it was a very large NGO at the
5 time.

6 Q. Well, Mr. Aqil is not a large NGO,
7 is he?

8 A. He individually, no, but Al-Haramain
9 was.

10 Q. Yeah. Well, again, from an
11 anti-money laundering perspective, wouldn't
12 Mr. Aqil's personal use or use of his personal
13 account to carry out transactions for a charity
14 that had over 90 accounts of its own with the bank
15 itself be a red flag?

16 MR. MAHAFFEY: Objection as to
17 form.

18 THE WITNESS: Not
19 necessarily. I think it would be
20 preferable to have the account in
21 Al-Haramain's name, but not necessarily
22 essential.

23 Again, it would depend on the
24 circumstances, and Al-Aqil's purpose and

1 explanation for the account being in his
2 name, not Al-Haramain's.

3 And I do note that, as we
4 discussed, Al-Haramain is referenced a
5 number of times with regard to these
6 transactions.

7 BY MR. CARTER:

8 Q. Right.

9 And so that would have provided the
10 bank with notice of the potential involvement of
11 Al-Haramain in using the account, wouldn't it?

12 A. Yes, it would.

13 MR. MAHAFFEY: Objection as to
14 form.

15 BY MR. CARTER:

16 Q. Okay. And if anything, that would
17 be a red flag?

18 A. I can't say that it would. Again,
19 it would depend on the bank's knowledge of the
20 account, why the account was in Al-Aqil's name
21 instead of Al-Haramain.

22 MR. CARTER: Let's go ahead
23 and mark as the next exhibit here the
24 1995 SAMA guidelines which are at Tab 17.

1 (Document marked for
2 identification as Pasley Exhibit 8.)

3 THE WITNESS: Yes, I see that.

4 I've got a copy of it.

5 BY MR. CARTER:

6 Q. Okay. And, Mr. Pasley, did you
7 review this document in connection with the
8 preparation of your expert report?

9 A. I believe I did, yes.

10 Q. Okay. And my understanding that
11 these are guidelines on money laundering that the
12 Saudi Arabian Monetary Authority issued in 1995;
13 is that correct?

14 A. I don't know the date in front of
15 me, but I'll take your word for it.

16 Q. Okay. Well, if we go to the third
17 page of the document?

18 A. Yes, I have the page open, and it
19 says 1995.

20 Q. Okay. And is it your understanding
21 that these guidelines applied to Al Rajhi Bank
22 during the 1998 to 2001 time period?

23 MR. MAHAFFEY: Objection as to
24 form.

1 THE WITNESS: It would seem
2 that they would.

3 BY MR. CARTER:

4 Q. And just to touch on a few of these
5 guidelines and focusing initially on the issues
6 we've been discussing about suspicious
7 transactions, in Section 5.9 on the page that is
8 the handwritten notation 144 and continuing to
9 145.

10 MR. MAHAFFEY: Counsel, sorry
11 to interrupt. There seems to be a bit of
12 an issue with this document loading in
13 the exhibit. So you need to make sure
14 it's on the screen or give a second to --

15 MR. CARTER: Sure.

16 THE WITNESS: Yeah, I think
17 I'm on page 144.

18 BY MR. CARTER:

19 Q. Okay. If we're -- if we're all
20 receiving the same feed, we should have the pages
21 with the handwritten notations 144 and 145 in
22 front of us.

23 Do you have that, Mr. Pasley?

24 A. Well, I see 144.

1 Q. Okay.

2 A. Scrolling down I see 145.

3 Q. Great.

4 A. So I see the two pages.

5 Q. Okay. And there's a Section 5.9
6 covering "Alerting the Authorities of Suspicious
7 Transactions."

8 A. Yes, I see that.

9 Q. And it says under Section 3 that:
10 "A Bank should identify for use and
11 reference of its employees distinct patterns of
12 customer behaviour or unusual patterns of
13 transactions that could indicate money laundering
14 activities. These could be regular or periodic
15 transactions of either very large or small
16 amounts. These can be without an apparent
17 economic or acceptable purpose and often with
18 parties operating from countries or jurisdictions
19 that are known to have weak regulations for
20 combating money laundering activities."

21 Do you see that?

22 A. Yes, I do. That's a very common
23 guideline.

24 Q. Okay. And the very common

1 guideline, as you call it, on money laundering
2 indicates that very large -- transactions of very
3 large amounts can be an indicator of money
4 laundering, doesn't it?

5 A. And where are you? I'm sorry.

6 Q. Okay. In the top of the page
7 written 145.

8 "These could be regular or periodic
9 transactions of either very large or small
10 amounts."

11 A. Yes, I see that.

12 Q. Okay. So transactions of very large
13 amounts are a potential flag for money laundering?

14 A. Potentially, yes.

15 Q. Okay.

16 A. But I also see item number 2 on page
17 144 saying that "A Bank is not responsible for
18 carrying out formal investigations of all customer
19 transactions."

20 Q. Right.

21 It's risk-based, right?

22 A. Yes, it is.

23 Q. Okay. And so the duty is to do
24 what's necessary based on the risk that's

1 indicated?

2 A. And it's up to the discretion of the
3 bank to determine what is appropriate to review
4 and necessary to review.

5 Q. And SAMA, though, in trying to
6 inform the bank about what's appropriate to review
7 identifies large transactions as an area of
8 concern?

9 A. Yes.

10 Q. Okay. And then it also identifies
11 transactions without an apparent economic or
12 acceptable purpose.

13 Do you see that?

14 A. Yes, I do.

15 Q. Okay. We've looked at the Aqil
16 Al-Aqil transactions.

17 Do you have any idea what the
18 apparent economic or acceptable purpose of them
19 was?

20 A. No, I do not because I have not
21 contacted the account holders.

22 Q. Now, in your report, you indicate
23 that there's no evidence that the transactions
24 were used for wrongdoing, and that's a statement

1 you make on page 10 of your report.

2 A. That is correct.

3 Q. Okay. Is that the protocol for
4 assessing whether or not the transactions are
5 suspicious?

6 MR. MAHAFFEY: Objection as to
7 form.

8 THE WITNESS: This is a
9 statement in my report rebutting
10 Mr. Winer's report.

11 BY MR. CARTER:

12 Q. Okay.

13 A. So I'm pointing out the fact that
14 it's not been established in the record by
15 Mr. Winer or elsewhere that there's any evidence
16 that this is problematic or wrong and/or that the
17 bank did not report it.

18 Q. But the factor that SAMA instructed
19 Al Rajhi Bank and other banks to consider was
20 whether or not the transactions on their face
21 lacked an apparent economic or acceptable purpose,
22 not whether or not they were overtly associated
23 with wrongdoing, correct?

24 A. Well, I guess I would disagree with

1 you. It would be incumbent upon the bank, to the
2 extent it's not aware of the economic purpose, to
3 inquire as to what the possible economic purpose
4 was.

5 Q. And would you expect those types of
6 inquiries to be reflected in the Know Your
7 Customer file?

8 A. Not in the Know Your Customer file,
9 which would pertain to the opening of the account,
10 but it would pertain to any written conclusions as
11 to the analysis of the bank of the transactions or
12 the account.

13 Q. What about the customer information
14 file?

15 A. Well, that would be part and parcel
16 of Know Your Customer.

17 Q. Well --

18 A. And that is -- I'm sorry.

19 That is prepared at the account
20 opening time. Now, that might be reviewed and
21 referenced in order to determine the nature of the
22 account and the transactions, but it's not
23 necessarily part -- it wouldn't be the only thing
24 the bank would look at in analyzing the potential

1 economic purpose of the transactions.

2 Q. Are you familiar with Al Rajhi
3 Bank's protocols for maintaining customer records
4 during this time?

5 A. No, I am not.

6 Q. And do you know whether or not any
7 suspicious activity reports that issued in
8 relation to the Aqil transactions should have been
9 reflected in materials turned over in discovery?

10 MR. MAHAFFEY: Objection as to
11 form.

12 THE WITNESS: Well, in the
13 United States, those reports are strictly
14 confidential and wouldn't be disclosed to
15 anybody, other than law enforcement and
16 FinCEN and banking regulators.

17 BY MR. CARTER:

18 Q. Okay. Moving on, and we'll get back
19 to that.

20 In Appendix - 2 of the SAMA
21 guidelines, there's a list of Money Laundering
22 Indicators?

23 A. I believe it's loading. It's very
24 slow.

1 Q. Sorry.

2 A. Not your fault.

3 I have Appendix - 1 but not 2.

4 Q. Yeah, it's at page 150. They have
5 it up on mine. So I think it will be loading in a
6 second.

7 A. I have page 151, but not 150. So
8 it's not cooperative.

9 But I have it up on your screen.

10 Q. Okay. So you're able to see page
11 150?

12 A. Yes, I am.

13 Q. And do you see where there's a
14 section "General Indicators" referring to money
15 laundering general indicators?

16 A. Yes, I do.

17 Q. And SAMA describes there:

18 "The transaction whose general form
19 is indicative of illegitimate or unknown purpose.
20 Existence of movements in the customer's account
21 not related to his activities such as" and then it
22 describes "Continuous cash deposits"?

23 A. I see that.

24 Q. Okay. "Large deposits of cheques,

1 incoming drafts and payment orders that are
2 inappropriate to the nature of customer's
3 activities"?

4 A. Yes, I see that.

5 Q. "Large withdrawals or deposits
6 inconsistent with the customer's activities,"
7 right?

8 A. I see -- I see that.

9 Q. And do you believe that the cash
10 transactions involving Mr. Aqil's account fit
11 within that indicator?

12 A. Not necessarily because this says
13 it's activity that's not related to his
14 activities. I don't know what his activities are.
15 He seems to be operating on behalf of Al-Haramain,
16 which as I understand at the time was a very, very
17 large NGO, one of the largest, to which many
18 people were contributing cash donations and other
19 donations.

20 Q. But in the first year plus two
21 months of the account statements we have available
22 for Mr. Aqil's account, you'll recall that the
23 total value of the funds never went above 29,000
24 riyals and -- and actually went down to negative

1 1,000 riyals, correct?

2 A. I remember that, yes.

3 Q. And that is an indicator of the
4 historical usage of the account, isn't it?

5 A. Well, I don't know why it changed.

6 Q. Okay. Someone should have asked?

7 A. Potentially, if the bank didn't
8 already know. Potentially, the bank should have
9 inquired, but I did not have that information
10 available to me and I did not contact Mr. Al-Aqil.

11 Q. Now, you mentioned that Al-Haramain
12 was taking in cash deposits during the time?

13 A. Yes, I believe it was.

14 Q. Okay. Where were those coming from,
15 as you understood it?

16 A. Individual donations, as I
17 understand.

18 Q. And do you know the riyal
19 denominations that were common in Saudi Arabia
20 during the time period?

21 A. No, I do not.

22 Q. Okay. And so is -- are you
23 suggesting in your testimony that the nearly 19
24 million riyals that were deposited into Mr. Aqil's

1 account, the one held in his own name, would have
2 potentially been from cash donations from
3 individual donors to Al-Haramain?

4 MR. MAHAFFEY: Objection as to
5 form.

6 THE WITNESS: I do not know
7 the source or purpose of the -- of the
8 transactions. I do note that they were
9 in cash.

10 BY MR. CARTER:

11 Q. And, again, if we're just looking at
12 this period of time, it would mean that there
13 would have had to be cash donations totaling in
14 excess of 19 million riyals just in a two-month
15 period?

16 A. I don't know what made up the cash
17 transactions.

18 Q. Okay. And do you have a sense of
19 what 1.259 million riyals would look like
20 physically?

21 MR. MAHAFFEY: Objection as to
22 form.

23 THE WITNESS: No, I do not
24 know.

1 BY MR. CARTER:

2 Q. If -- if -- if someone walked into a
3 bank with a massive stack on a pallet, would that
4 be a concern?

5 A. Potentially, yes, that would
6 potentially be unusual.

7 Q. And if someone did that almost on a
8 daily basis over the period of two months, would
9 that be a concern?

10 A. Potentially, yes.

11 Q. Going back to the SAMA guidelines.

12 There are requirements reflected on
13 where there's a section of this manual called
14 "Internal Control Systems" at 5.1.

15 It's on 137 --

16 A. 130 --

17 Q. -- and continues on 138.

18 A. We were at 150. So I have to go
19 back up.

20 I'm on page 137.

21 Q. Okay. And do you see the section
22 titled "Internal Control Systems"?

23 A. Yes, I do.

24 Q. And under Section 3, the section --

1 the second sentence says:

2 "A bank should use specialized
3 software that is available in the market to detect
4 unusual patterns of transactions and trends to
5 indicate criminal activities."

6 A. I see that, yes.

7 Q. Do you know whether or not Al Rajhi
8 Bank had in place any specialized software to
9 detect unusual patterns of transactions and
10 trends?

11 A. I do not know specifically, but I do
12 note that Mr. Winer in his report indicates, if
13 I'm not mistaken, that the bank was following the
14 guidelines of SAMA.

15 Q. Well, he said that the bank was --
16 bank was subject to the guidelines of SAMA, and
17 his report says that they failed to adhere to
18 those guidelines. He doesn't say that they
19 fulfilled the requirements of SAMA.

20 MR. MAHAFFEY: Objection as to
21 form.

22 THE WITNESS: I'm not going
23 to quarrel with you.

24 My recollection is that he was

1 indicating that the bank was generally
2 following the guidelines that were put
3 out by SAMA.

4 BY MR. CARTER:

5 Q. Okay. I'm just for the record going
6 to disagree with that characterization of his
7 report.

8 A. That's fine.

9 Q. Okay. So you don't know if there
10 was any software in place?

11 Among other things, it says that
12 this type of software detecting unusual patterns
13 would normally include a mechanism, and then on
14 the next page, there are two sections about
15 significant transactions report.

16 Do you see that?

17 A. Yes, I do.

18 Q. Okay. And the first says that this
19 report "should include all telegraphic transfers
20 affected via telex, Swift and other means."

21 A. Yes, I see that.

22 Q. Okay. And then the second says:

23 "These should include all
24 transactions which exceed Saudi riyal 100,000.

1 Significant transactions report should identify
2 accounts to which these transactions are related
3 and the sources of these large amounts."

4 Do you see that?

5 A. Yes, I see that.

6 Q. Okay. Do you agree that the
7 transactions that we discussed in Mr. Aqil's
8 accounts involving deposits of well over 200,000
9 and up to 1.2 million riyals would meet the
10 definition in subsection 4 here for the
11 significant transactions report?

12 A. Yes. The transactions are over
13 100,000 Saudi riyals.

14 Q. And what is the point of this kind
15 of significant transactions report?

16 A. To serve as a basis or indicator for
17 the banks to review the transactions.

18 Q. Okay. So this is an automated
19 mechanism to bring to the attention of the bank
20 transactions that warrant particular review,
21 correct?

22 A. If the bank has software that would
23 indicate alerts, spit out alerts with regard to
24 all transactions over 100,000 SR, then -- then,

1 yes, I would say so.

2 Q. And --

3 A. I don't know what the bank's
4 parameters were or what its software was.

5 Q. But SAMA says that it should have
6 software and says that it should include a
7 mechanism to generate these significant
8 transactions reports, doesn't it?

9 MR. MAHAFFEY: Objection as to
10 form.

11 THE WITNESS: Yes, and I
12 didn't see anything from SAMA indicating
13 that the bank had failed to adhere to
14 this guideline.

15 BY MR. CARTER:

16 Q. Okay. Did you see anything
17 indicating the existence of any significant
18 transactions report?

19 A. I did not have that available to me,
20 no.

21 Q. Okay. And you don't know sitting
22 here today whether the bank actually had any
23 software in place at all, do you?

24 MR. MAHAFFEY: Objection as to

1 form.

2 THE WITNESS: I don't know
3 the internal recordkeeping or reports
4 that were conducted by the bank, no.

5 BY MR. CARTER:

6 Q. Now, you talked earlier about the
7 fact that the issuance of a SAR does not provide a
8 predicate for closing the account, correct?

9 MR. MAHAFFEY: Objection as to
10 form.

11 THE WITNESS: There's a
12 FinCEN guideline saying that it's up to
13 the discretion of the bank as to whether
14 or not to close the account. Even if the
15 law enforcement authorities ask for the
16 account to be closed, that it's up to the
17 bank.

18 BY MR. CARTER:

19 Q. Okay. And --

20 A. One way or the other. Let me
21 rephrase that.

22 If law enforcement asks for the
23 account to be kept open for monitoring purposes,
24 the bank does not necessarily have to agree to

1 that.

2 Q. Okay. And the FinCEN requirements
3 you're talking about are current requirements
4 governing U.S. banks?

5 A. That is correct.

6 Q. Okay. Now, with regard to the SAMA
7 guidelines on page 136, there's a section titled
8 "General Policy Requirements."

9 A. Yes, I see that.

10 Q. Okay. And number 2 discusses
11 depositor fund taking, and it says:

12 "Saudi banks should take care when
13 accepting deposits or other funds. If it is
14 suspected that a deposit is, or forms part of
15 funds obtained through illegal activities, then
16 these funds should be accepted in the normal
17 manner, following correct procedures. Under no
18 circumstances should the customer be alerted to
19 any suspicion. The suspicious deposit should be
20 reported to the Police and SAMA."

21 That's the suspicious activity
22 reporting protocol?

23 A. Whatever they -- whatever their
24 terminology is, yes.

1 Q. Okay.

2 A. I would agree.

3 Q. And then it goes on to say that in
4 the event that that happens, "no transfers or
5 withdrawals should be allowed from" a SAMA -- from
6 -- sorry.

7 "No transfers or withdrawals should
8 be allowed from account until authorized by the
9 Police or SAMA."

10 Do you see that?

11 A. I see where it says that, yes.

12 Q. Okay. So when we reviewed the Aqil
13 transfers, I think we agreed that there were
14 deposits on an almost nearly daily basis during
15 that May of '99 to July of '99 period, correct?

16 A. Yes, I believe that's the case.

17 Q. Okay. And there didn't appear to be
18 interruption -- any interruption of services in
19 the account during that period?

20 A. Not that were apparent.

21 Q. Okay. And doesn't that suggest that
22 there was no suspicious activity report filed?

23 MR. MAHAFFEY: Objection as to
24 form.

1 THE WITNESS: I don't know
2 whether a suspicious activity report was
3 filed or not. I just have no way of
4 knowing.

5 BY MR. CARTER:

6 O. But --

7 A. And if the -- I mean, I don't
8 understand this guideline. Because if a report is
9 filed and the account is closed or frozen, the
10 account holder would know that a report has been
11 filed.

12 Q. Well, it is SAMA's guideline?

13 A. Right, and, again, I didn't draft
14 this. I don't have an ability to interpret it.

15 Q. And now you've talked a bit about
16 this -- this process being risk-based and
17 dependent on who the customer is and what the
18 nature of their job is, correct?

19 A. Yes.

20 Q. Okay. And the SAMA guidelines also
21 talk about the information that Al Rajhi Bank
22 should have collected in order to have a baseline
23 understanding to assess those risks, right?

²⁴ A. To the extent it's contained in the

1 guideline, I would agree with you. I don't know
2 where exactly it is as you state in the guideline.

3 Q. Okay. Well, on 139?

4 A. Yes.

5 Q. Okay. It says "Personal Account for
6 an individual"?

7 A. Yes.

8 Q. Okay. And for purposes of an
9 individual, among other things, it requires that
10 the bank "seek information on the customer's
11 business, or job title and ascertain the accuracy
12 of such information," right?

13 A. Yes, I see that.

14 Q. Okay. And it also says that:

15 "The Bank should be aware of the
16 sources of customer's deposits, particularly those
17 of significant cash amounts."

18 A. I see that, yes.

19 Q. Okay. And so under these
20 guidelines, Al Rajhi Bank should have been aware
21 of Aqil Al-Aqil's job title?

22 MR. MAHAFFEY: Objection as to
23 form.

24 THE WITNESS: That's set

1 forth in the guideline, and I don't know
2 what the bank knew or did not know.

3 BY MR. CARTER:

4 Q. Okay. And the bank should have been
5 taking steps to be aware of the sources of the
6 customer's deposits, particularly those of
7 significant cash amounts, right?

8 MR. MAHAFFEY: Objection as to
9 form.

10 THE WITNESS: That seems to
11 be what the guideline is saying.

12 Again, I did not draft the
13 guideline and am not in a position to
14 really interpret it.

15 BY MR. CARTER:

16 Q. And do you know what, if anything,
17 Al Rajhi Bank did during that May of 1999 through
18 July of 1999 period to ascertain the sources of
19 the 19 million or so riyals in funds that were
20 being deposited into Aqil Al-Aqil's account --

21 A. No.

22 Q. -- on almost daily?

23 A. I'm sorry. It's not in the record
24 as to what the bank did or did not do.

1 Q. Then turning on the next page, it
2 talks about business entities. It's a little bit
3 hard to find. It's --

4 A. I'm having difficulty.

5 Q. It's right there under the words
6 "Procedures to be followed when opening." Yeah.

7 A. Oh, okay.

8 Q. Business entities.

9 A. Is this? What page is it?

10 Q. It's 140. Sorry.

11 A. No, no problem. I just -- okay.

12 Oh, here's the next.

13 Okay. Yes, I see it.

14 Q. Okay. And these are the guidelines
15 governing the information that the bank should
16 ascertain for purposes of a business account?

17 A. When it opens the account, yes.

18 Q. Okay. And would the accounts of the
19 charities fall under the business account protocol
20 or the personal account for individual protocol?

21 A. Generally, the business protocol.

22 Q. Okay. And the protocols for
23 businesses are different than the ones for
24 individuals?

1 A. Yes, generally.

2 Q. Okay.

3 A. Because an individual operates
4 differently from a business.

5 Q. Right.

6 And so if a business is using an
7 individual's account to carry out its affairs, the
8 bank doesn't have the baseline information for
9 that business it's supposed to have?

10 A. Not necessarily. It may well have
11 asked for that baseline information with regard to
12 the business, even though the account is in the
13 name of an individual.

14 Again, I don't know the CIP
15 information that the bank had with regard to this
16 account.

17 Q. Okay. Well, it's supposed to obtain
18 that information at the time the account is being
19 opened for the entity or person, right?

20 A. That is correct.

21 Q. Okay. And among other things, this
22 indicates that:

23 "The Bank should collect direct or
24 indirect information about the business

1 enterprise.

2 "Bank employees should visit the
3 enterprise's location, if possible.

4 "The Bank should know the sources of
5 deposits, specially large cash deposits when an
6 account is being opened.

7 "The Bank should obtain the
8 following information when an enterprise is
9 opening a significant account.

10 "The financial structure of the
11 enterprise and its annual financial statements.

12 "Description of the services and
13 business.

14 "List of significant suppliers,
15 customers and their locations.

16 "Description of the geographical
17 coverage where the enterprise carries out its
18 activities."

19 Do you see all of that?

20 A. Yes, and, again, remind me when this
21 was issued.

22 Q. 1995.

23 A. Okay. Keep in mind that it wasn't
24 until after 9/11 that the United States had any

1 CIP requirements imposed on banks for individual
2 accounts or business accounts.

3 Q. Well, this is the document that
4 governed what Al Rajhi Bank was supposed to do,
5 right?

6 A. Right.

7 MR. MAHAFFEY: Objection as to
8 form.

9 BY MR. CARTER:

10 Q. And do you know whether or not all
11 of those steps were undertaken with respect to the
12 opening of accounts for Al-Haramain?

13 MR. MAHAFFEY: Objection as to
14 form.

15 THE WITNESS: I do not know.

16 BY MR. CARTER:

17 Q. Do you know whether those steps were
18 undertaken with regard to the opening of any
19 accounts for IIRO?

20 MR. MAHAFFEY: Objection as to
21 form.

22 THE WITNESS: No, I do not
23 know.

24 BY MR. CARTER:

1 Q. Okay. And in terms of the scope of
2 the issues that SAMA intended to address via these
3 guidelines, just direct your attention to the
4 Introduction.

5 A. I'm sorry. Where are you directing
6 me to?

7 Q. I'm sorry. Page 134.

8 A. Oh, it's way up.

9 Yes, I'm on page 134. Introduction.
10 I see that.

11 Q. And it says:

12 "By all accounts, world-wide money
13 laundering activities, particularly those related
14 to drugs, now constitutes a multi-billion dollar
15 business annually."

16 Do you see that?

17 A. Yes, I do.

18 Q. And it goes on to say:

19 "However, money laundering could
20 also encompass funds derived from theft,
21 blackmail, extortion, terrorism and other criminal
22 activities."

23 Do you see that?

24 A. Yes, I do.

1 Q. So the SAMA guidelines you would
2 agree issued in 1995 referred to terrorism
3 explicitly?

4 A. Yes, it appears that it did.

5 Q. Okay. And it goes on to say that:
6 "It is inconceivable and unlikely
7 that such large amounts of money can be stored or
8 moved without the cooperation or unwitting
9 participation of many international banks and
10 banking systems."

11 Right?

12 A. Yes.

13 Q. And that it goes on to acknowledge
14 that "money-laundering is considered as a serious
15 threat to the integrity of many international
16 banks and even some banking systems"?

17 A. Yes, and as it indicates, banks may
18 be involved with cooperation or unwittingly.

19 Q. Yep.

20 With regard to the accounts of the
21 charities --

22 A. Yes.

23 Q. -- does the principle that the level
24 of diligence that was required depends on the risk

1 also apply?

2 A. Yes, it would depend on the risk.

3 It's a risk-based operation, yes.

4 Q. And as I recall, the SAMA guidelines
5 indicated that banks were required to ascertain
6 geographical regions where its customers were
7 carrying out activities?

8 A. I can't remember that specifically,
9 but I wouldn't be surprised.

10 Q. On 140 in the business entity
11 section we just reviewed, it says:

12 "Description of the geographical
13 coverage where the enterprise carries out its
14 activities."

15 A. Okay. I would agree with your
16 reading of the document.

17 Q. And do regions where active armed
18 conflicts are ongoing pose more significant risk
19 than stable geographical regions?

20 A. Yes, and NGOs are more apt to be
21 operating in high-risk areas. So, yes, I would
22 agree with you.

23 Q. And some of those high-risk areas
24 are high risk because some of the activities may

1 include arms tracking -- trafficking, right?

2 A. That is correct.

3 Q. You discuss in your report that SAMA
4 was the regulatory authority overseeing Al Rajhi
5 Bank during this period, right?

6 A. That is correct.

7 Q. And do you happen to know whether in
8 the period after the September 11th attacks the
9 U.S. government expressed concern -- excuse me --
10 about the rigor of SAMA's oversight of banks in
11 Saudi Arabia?

12 MR. MAHAFFEY: Objection as to
13 form. Scope.

14 THE WITNESS: I think in the
15 documentation, especially the State
16 Department cable, there was reflection of
17 that issue, yes.

18 BY MR. CARTER:

19 Q. And is your recollection that the
20 U.S. expressed some dissatisfaction with the rigor
21 of SAMA's AML oversight?

22 MR. MAHAFFEY: Objection as to
23 form. Scope.

24 THE WITNESS: Again, as I

1 indicated, I think that's reflected in
2 the documentation. I would let the
3 cables speak for themselves as to what
4 concerns the United States had and what
5 concerns they expressed to the Saudi
6 government.

7 BY MR. CARTER:

8 Q. Okay. You indicate in your report
9 that you find it implausible -- sorry, I want to
10 get the language right -- "implausible that the
11 United States would fail to sanction Al Rajhi Bank
12 if the bank was truly known to support al-Qaeda
13 and terrorist activities targeted against the
14 United States."

15 Do you see that?

16 A. I remember saying that, yes. I
17 don't see it in my report, but I remember saying
18 it.

19 Q. And the principal designation tool
20 in the wake of the September 11th attacks was the
21 Executive Order 13224 designation program,
22 correct?

23 MR. MAHAFFEY: Objection as to
24 form.

6 BY MR. CARTER:

7 Q. And do you know whether or not the
8 United States viewed designation as simply one of
9 a number of possible tools that could be used to
10 deal with terrorist financing issues?

11 MR. MAHAFFEY: Objection as to
12 form. Scope.

13 THE WITNESS: I believe it
14 was one of a number of tools, yes.

15 BY MR. CARTER:

16 Q. Okay. And do you know what
17 considerations came into play in deciding whether
18 or not it was the appropriate tool?

19 MR. MAHAFFEY: Objection as to
20 form.

1 BY MR. CARTER:

2 Q. And --

3 A. -- and CIA.

4 Q. And the State Department would be
5 involved because of diplomatic equities?

6 A. I believe so, yes.

7 MR. MAHAFFEY: Objection as to
8 form.

9 BY MR. CARTER:

10 Q. And CIA would be involved because of
11 intelligence equities?

12 MR. MAHAFFEY: Objection as to
13 form.

14 THE WITNESS: Yes, I believe
15 so.

16 BY MR. CARTER:

17 Q. And do you have any familiarity with
18 how those factors may have come into play with
19 regard to the dealings with Saudi Arabia on Al
20 Rajhi Bank?

21 MR. MAHAFFEY: Objection as to
22 form.

23 THE WITNESS: No, not with any
24 particularity. No, I was not involved in

1 that process.

2 BY MR. CARTER:

3 Q. On page 4 of your report --

4 A. Yes.

5 Q. -- it says -- sorry. I'm trying to
6 find the right paragraph.

7 Oh. On page 4 of your report in
8 Section D, you say:

9 "I find it is entirely plausible
10 that a bank would not know if its NGO customer
11 accounts were being misused for terrorism
12 financing."

13 You see that?

14 A. Yes, I see that.

15 Q. And whether or not a bank knows or
16 not if its NGO customer accounts are being misused
17 is a question concerning the bank's state of mind,
18 right?

19 MR. MAHAFFEY: Objection as to
20 form.

21 THE WITNESS: I don't know
22 what the bank's state of mind is.

23 It would be -- it would depend
24 on the bank's analysis and its knowledge

1 of the transactions and of the account.

2 I do note that in Mr. Winer's
3 report in particular, he notes that it's
4 very difficult to uncover terrorism
5 financing and it's usually only a small
6 part of even an illicit NGO.

7 BY MR. CARTER:

8 Q. Okay. But the statement you're
9 indicating here reflects your views on what Al
10 Rajhi Bank may or may not have known, right?

11 MR. MAHAFFEY: Objection as to
12 form.

13 THE WITNESS: I'm not sure I
14 can agree with you. I don't know really
15 what -- what the question is.

16 BY MR. CARTER:

17 Q. Okay. Well --

18 A. It says statement in rebuttal to
19 Mr. Winer's and Mr. Kohlmann's reports.

20 Q. It addresses the bank's knowledge,
21 right?

22 MR. MAHAFFEY: Objection as to
23 form.

24 THE WITNESS: It refers to

1 charitable donations sometimes
2 unwittingly going for noncharitable
3 purposes and that it is not easy to
4 discover.

5 BY MR. CARTER:

6 Q. The opinion I was referring to is
7 the opinion that you find it plausible that the
8 bank would not know.

9 A. Correct.

10 Q. And that concerns the bank's
11 knowledge, right?

12 MR. MAHAFFEY: Objection as to
13 form. Misstates the report.

14 THE WITNESS: Yes, the bank
15 would not necessarily know, and SAMA
16 indicates it's not necessary for the bank
17 to investigate all transactions.

18 MR. CARTER: Why don't we take
19 a quick break, and we'll see if we need
20 to come back.

21 THE VIDEOGRAPHER: The time is
22 12:12 p.m. We are off the record.

23 (Recess.)

24 THE VIDEOGRAPHER: The time is

1 12:23 p.m. We are back on the record.

2 THE WITNESS: Thank you. I
3 just wanted to correct two things.

4 BY MR. CARTER:

5 Q. Sure.

6 A. One with regard to the number of
7 hours I worked on the case, up to the submission
8 of my report on December 18th of last year, I
9 worked 115 hours.

10 Q. Okay. Thank you.

11 A. And secondly with regard to the
12 number of cases that I handled against a bank,
13 there are three of them and two of them actually
14 were against Bank of America.

15 Q. And what was the name of the other
16 bank that you appeared in adverse capacity?

17 A. It was a small bank in Florida
18 involving a conflict of interest in firing a
19 director and his widow, I think, brought the case
20 against the bank, and the case was settled very
21 quickly.

22 Q. Okay.

23 A. So I really had no -- no active role
24 in the case. I was retained, but there was

1 nothing came of the case.

2 MR. CARTER: Thank you.

3 And just to try to summarize

4 the arrangement that we reached with

5 regard to Mr. Pasley's invoices -- and I

6 assume this extends as well to

7 Mr. Lormel's invoices -- you've agreed to

8 provide the statement of the total hours

9 and the amount billed?

10 MR. MAHAFFEY: Correct.

11 MR. CARTER: But none of the

12 content of the -- other content of the

13 invoices?

14 MR. MAHAFFEY: That's correct.

15 MR. CARTER: And we've agreed

16 to accept those as a basis to go forward

17 with the depositions, subject to a

18 reservation of our rights to ask the

19 judge for more information.

20 MR. MAHAFFEY: That's fine.

21 MR. CARTER: With that,

22 Mr. Pasley, we're done for the day.

23 Thanks so much.

24 THE WITNESS: Thank you.

1 MR. CARTER: Okay.

2 THE WITNESS: Thank you both.

3 THE VIDEOGRAPHER: The time is

4 12:25 p.m. We're off the record.

5

6 (Signature not waived, the

7 deposition concluded at 12:25 p.m.)

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23 ERRATA SHEET

24

1 Page No. _____ Line No. _____ Change to: _____

2 _____

3 Page No. _____ Line No. _____ Change to: _____

4 _____

5 Page No. _____ Line No. _____ Change to: _____

6 _____

7 Page No. _____ Line No. _____ Change to: _____

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17 Page No. _____ Line No. _____ Change to: _____

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19 Page No. _____ Line No. _____ Change to: _____

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21 Page No. _____ Line No. _____ Change to: _____

22 _____

23 DECLARATION UNDER PENALTY OF PERJURY

24 _____

1

2 I declare under penalty of
3 perjury that I have read the entire transcript of
4 my Deposition taken in the captioned matter
5 or the same has been read to me, and
6 the same is true and accurate, save and
7 except for changes and/or corrections, if
8 any, as indicated by me on the DEPOSITION
9 ERRATA SHEET hereof, with the understanding
10 that I offer these changes as if still under
11 oath.

12

13 Signed on the _____ day of
14 _____, 2024.

15

16

17 ROBERT S. PASLEY

18

19

20

21

22

23 CERTIFICATE OF REPORTER

24 DISTRICT OF COLUMBIA)

1 I, Denise Dobner Vickery, a
2 Registered Court Reporter and Notary Public of
3 the District of Columbia, do hereby certify that
4 the witness was first duly sworn by me.

5 I do further certify that the
6 foregoing is a verbatim transcript of the
7 testimony as taken stenographically by me at the
8 time, place and on the date herein set forth, to
9 the best of my ability.

10 I do further certify that I am
11 neither a relative nor employee nor counsel of
12 any of the parties to this action, and that I am
13 neither a relative nor employee of such counsel,
14 and that I am not financially interested in the
15 outcome of this action.

16

17

18

Denise D. Vickery

19 DENISE DOBNER VICKERY, CRR, RMR
20 Notary Public in and for the
21 District of Columbia

22

23 My Commission expires: March 14, 2028

24

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ERRATA
GOLKOW LITIGATION SERVICES
ONE LIBERTY PLACE
1650 MARKET STREET, SUITE 5150
PHILADELPHIA, PA 19103
877-370-3377

NAME OF CASE: *In Re: Terrorist Attacks On September 11, 2001*, No. 03-md-1570 (S.D.N.Y.)DATE OF DEPOSITION: January 31, 2024NAME OF DEPONENT: Robert S. Pasley

| Page | Line(s) | Change | Reason |
|-------------|----------------|--|---------------------|
| 9 | 15 | Remove duplicate word "record" before "video record" | Transcription error |
| 9 | 22 | Add "This is" before Michael | Transcription error |
| 10 | 2 | Replace "Kowacki" with "Kownacki" | Transcription error |
| 13 | 7 | Change "Yes, I do." To "Yes, I am." | Clarification |
| 15 | 10 | Change "had" to "done in relation to this matter" | Clarification |
| 18 | 1 | Add "," after "So" | Transcription error |
| 20 | 5-6 | Replace "No, I do not. It was, I believe, early October, but I did not go back and look." with "My first billing date was October 19, 2023." | Clarification |
| 20 | 14 | Replace "500 hours, if my math is correct." with "117 hours." | Clarification |
| 20 | 18-19 | Replace "I apologize. My math is not very good. It's 50 hours." with "It's 117 hours." | Clarification |
| 20 | 21 | Change "Yes." to "117 hours." | Clarification |
| 21 | 3 | "Approximately, yes." to "117 hours." | Clarification |
| 21 | 14 | "No, I do not know." to "Approximately 75 hours." | Clarification |
| 21 | 17-18 | Replace "Maybe 20, 25 hours, but it's a guess. I'm sorry." with "Approximately 75 hours." | Clarification |
| 21 | 22-22 | Replace "It's as good of a guess as I can come up with." with "Yes." | Clarification |
| 21 | 24 | Change "50" to "40" | Clarification |
| 22 | 23 | Change " a total number of" to "the total number of" | Transcription error |
| 24 | 17 | Insert "already" between "I" and "have a copy." | Transcription error |
| 29 | 2 | Add "at the OCC" after supervisors | Clarification |
| 29 | 4 | Change "went with the bank" to "started working for Bank of America" | Clarification |
| 29 | 14 | Add "at the OCC" after supervisor | Clarification |
| 32 | 7 | Delete "conducted and" | Clarification |
| 34 | 4-5 | Insert "," after "reports" and after "external" | Punctuation |
| 35 | 9 | Change "Naru" to "Nauru" | Transcription error |
| 35 | 15 | Change "It was -" to "Those cases" | Clarification |

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| Page | Line(s) | Change | Reason |
|------|----------------------|---|---------------------|
| 36 | 11, 17, 19, 23 | Change "Cypress" to "Cyprus" | Transcription error |
| 36 | 23-24 | Change "without review or investigation engaged in their activity." to "without review or investigation, revoked the bank's license" | Clarification |
| 36 | 14 | Change "they were" to "it was" | Clarification |
| 36 | 15 | Change "were" to "was" | Clarification |
| 36 | 16 | Change "themselves" to "itself" | Clarification |
| 36 | 18 | Change "their – their" to "its" | Clarification |
| 36 | 22 | Add "311" before "sanction" | Clarification |
| 37 | 4, 12, 13, 19, 23 | Change "Cypress" to "Cyprus" | Transcription error |
| 37 | 22 | Add "," after oversight | Punctuation |
| 39 | 16-17 | Replace "I'm having a hard time recalling the details. I believe it may well have been a" with "It was a" | Clarification |
| 39 | 18 | Change "by victims of a Ponzi scheme" to "by a victim of a con artist's scheme" | Clarification |
| 39 | 20 | Delete "engaged in the Ponzi scheme" | Clarification |
| 40 | 5 | Add "was" after "of the case" | Transcription error |
| 40 | 9-10 | Replace "No, I was not informed of that. If I'm not mistaken, if" with "If" | Clarification |
| 40 | 11 | Change "I believe the" to "The" | Clarification |
| 40 | 14 | Change "I believe it" to "If" | Clarification |
| 41 | 1 | Change "who's" to "who was" | Clarification |
| 41 | 6 | Delete "Diana and – and" before GSR | Clarification |
| 41 | 8 | Change "they" to "it" | Clarification |
| 42 | 9 | Add "There were three cases in which I was an expert witness against a bank." after "no." and before "One" | Clarification |
| 43 | 8-9 | Replace "There may have been one or two other cases." with "There were three cases in which I was an expert witness against a bank." | Clarification |
| 44 | 10 | Change "Royal" to "World" | Clarification |
| 45 | 14-16 | Replace "Yes, you are correct. I apologize for the misstatements or confusion." with "I apologize for the confusion. As I stated previously, I testified that I have worked primarily as an expert witness. The work with Brian Smith involved consulting and constituted a very short assignment." | Clarification |
| 49 | 8 | Change "suspicion" to "suspicious" | Transcription error |
| 50 | 6 | Change "sanctions" to "sections" | Transcription error |
| 58 | 22 | Change "does –" to "– does" | Transcription error |
| 66 | 4 | Change "infrequently" to ", infrequently," | Punctuation |
| 69 | 19 | Add "to" after "and" | Clarification |
| 74 | 9 | Remove "correctly" | Clarification |

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| Page | Line(s) | Change | Reason |
|------|---------|---|---------------------|
| 74 | 10-11 | Replace "indicated in the annual reports, it" with "said in my report, the annual reports" | Clarification |
| 74 | 17 | Add quotation marks around "no wrong doings." | Clarification |
| 75 | 1 | Insert "as" between "And" and "you say" | Transcription error |
| 75 | 15 | Insert "the" between "It's" and "September 27" | Transcription error |
| 80 | 1 | Change "are" to "is a" | Clarification |
| 80 | 15-17 | Change "I can't remember specifically what he testified to. I just – I don't know." to "Galloway testified in general that audits did occur, including by internal and external auditors and by SAMA of compliance with account opening documentation, on-boarding requirements and SAMA regulations. | Clarification |
| 85 | 12 | Change "they" to "there" | Clarification |
| 88 | 7-9 | Change "I couldn't – can't find it right off the hand – my hand." to "I can't find it immediately." | Clarification |
| 102 | 4 | Change "the account of" to "an account held by" | Transcription error |
| 102 | 20-21 | Change "The term is 'suspicious' or 'unusual.'" to "The term is 'suspicious or unusual.'" | Transcription error |
| 106 | 15 | Insert "enough" between "provide" and "information" | Transcription error |
| 109 | 23 | Add "the" before "United States" | Transcription error |
| 110 | 1 | Change "account. That" to "account that" | Transcription error |
| 112 | 5 | Delete "of the bank." after "history" | Clarification |
| 113 | 2 | Remove "like" before "at" | Transcription error |
| 130 | 9 | Change "I believe I did, yes" to "Yes, I reviewed the English portion of the document." | Clarification |
| 132 | 8 | Add "in the English portion of the document" after "that" and before "." | Clarification |
| 132 | 22 | Add "see that in the English portion of the document" after "do" and before "." | Clarification |
| 133 | 11 | Add "in the English portion of the document" after "that" and before "." | Clarification |
| 134 | 14 | Add "see that in the English portion of the document" after "do" and before "." | Clarification |
| 138 | 16 | Add "see that in the English portion of the document" after "do" and before "." | Clarification |
| 138 | 23 | Add "in the English portion of the document" after "that" and before "." | Clarification |
| 139 | 2 | Add "the" before "customer's" | Transcription error |
| 139 | 4, 8 | Add "in the English portion of the document" after "that" and before "." | Clarification |
| 142 | 23 | Add "see that in the English portion of the document" after "do" and before "." | Clarification |
| 143 | 6 | Add "in the English portion of the document" after "that" and before "yes." | Clarification |

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| Page | Line(s) | Change | Reason |
|------|---------|--|---------------------|
| 144 | 17 | Add "see that in the English portion of the document" after "do" and before ":" | Clarification |
| 144 | 21 | Add "in the English portion of the document" after "that" and before ":" | Clarification |
| 145 | 5 | Add "in the English portion of the document" after "that" and before ":" | Clarification |
| 148 | 9 | Add "in the English portion of the document" after "that" and before ":" | Clarification |
| 148 | 23 | Change "Whatever they -- whatever their terminology is, yes." to "I see those words in the English portion of the document. As to your question, whatever they -- whatever their terminology is, yes." | Clarification |
| 149 | 11 | Add "in the English portion of the document" after "that" and before ", yes." | Clarification |
| 151 | 2 | Change "as you state" to ", as you state," | Punctuation |
| 151 | 7 | Change "Yes." to "Yes, I see that in the English portion of the document." | Clarification |
| 151 | 13 | Add "in the English portion of the document" after "that" and before ":" | Clarification |
| 151 | 18 | Add "in the English portion of the document" after "that" and before ", yes." | Clarification |
| 153 | 13 | Add "in the English portion of the document" after "it" and before ":" | Clarification |
| 155 | 5 | Change "specially" to "especially" | Transcription error |
| 155 | 20 | Change "Yes, and, again, remind me when this was issued." to "Yes, I see that in the English portion of the document. And, again, remind me when this was issued." | Clarification |
| 157 | 17, 24 | Add "see that in the English portion of the document" after "do" and before ":" | Clarification |
| 158 | 12 | Change "Yes." to "Yes, I see that in the English portion of the document." | Clarification |
| 159 | 16 | Add "English portion of" after "the" and before "document." | Clarification |
| 162 | 22 | Add "the" before "internal discussions" | Transcription error |
| 162 | 23 | Add "the" before "State Department" | Transcription error |
| 167 | 9 | Change "115" to "117" | |
| 167 | 17 | Add ", the First National Bank of Mount Dora." after "It was a small bank in Florida" | Clarification |
| 167 | 24 | Delete "there was" | Clarification |

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ACKNOWLEDGEMENT OF DEPONENT

I, Robert Pasley, do hereby certify that I have read the pages in the transcript of my deposition on January 31, 2024, in the matter *In Re: Terrorist Attacks On September 11, 2001*, No. 03-md-1570 (S.D.N.Y.), and that the transcript is a correct transcription of the answers given by me to the questions therein propounded, subject to the corrections and changes in form or substance noted in this Errata.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed 3/18/24

Robert S Pasley

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